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# Congressional Record

PROCEEDINGS AND DEBATES OF THE 101<sup>st</sup> CONGRESS, FIRST SESSION

## SENATE—Wednesday, June 14, 1989

(Legislative day of Tuesday, January 3, 1989)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable HARRY REID, a Senator from the State of Nevada.

### PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

*For God has done what the law, weakened by the flesh, could not do. \* \* \* Romans 8:3 RSV.*

Righteous God, perfect in justice and truth, these words from the Apostle Paul, who revered the Ten Commandments, recognize the limitations of law—even the perfect law of God—to produce desirable social order. As practical politicians struggle for the delicate balance between realism and idealism, help them to appreciate the inadequacy of the best that legislation can achieve. Save them from frustration and disappointment when laws they pass fail to produce the results they envision. Grant to all of us the realism which acknowledges that law is impotent against pride and greed and lust and arrogance and avarice and jealousy and selfishness. Infuse us with the consolation and confidence that "man's extremity is God's opportunity." Teach us to trust Thee beyond our own individual and corporate capacity and power.

In His name who is the way, the truth, and the life. Amen.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, June 14, 1989.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I

hereby appoint the Honorable HARRY REID, a Senator from the State of Nevada, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. REID thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the acting majority leader is now recognized.

### THE JOURNAL

Mr. PRYOR. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

### SCHEDULE

Mr. PRYOR. Mr. President, this morning following the time for the two leaders, there will be a period of morning business not to extend beyond 9:30 a.m. with Senators permitted to speak for up to 5 minutes each. At 9:30 a.m., the Senate will then resume consideration of H.R. 1722, and Senator BRADLEY, of New Jersey, will be, at that time, recognized to offer his amendment, which is under a 1-hour time limitation.

Mr. President, as the majority leader indicated on yesterday, the vote on or in relation to the Bradley amendment will occur immediately before a vote on final passage of the bill. These two votes should begin approximately at 12 noon. Senators should therefore be alerted that two rollcall votes will occur back to back at approximately 12 noon today.

### STRIKING OF CONGRESSIONAL COMMEMORATIVE COIN

Mr. PRYOR. Mr. President, in behalf of the majority leader, I would like to announce that today, Wednesday, June 14, 1989, Flag Day, from 10:30 a.m. until 12 noon, a "first-strike" ceremony for the Bicentennial of the Congress commemorative coin will take place on the east front plaza of the Capitol in a large tent constructed for this purpose. All Members of Congress are invited and encouraged to attend this very historic event. Also, all members of the staffs of the Senate and the House and committee staffs are cordially invited to attend. Present will be the Secretary of the Treasury, Nicholas F. Brady; Treasurer of the United States, Katherine D. Ortega, and the Director of the U.S. Mint, Donald Pope.

This very important first-strike ceremony, Mr. President, for the congressional coin is taking place at the Capitol, where Congress resides, on Flag Day as part of the Congressional Bicentennial celebrations. This is the first time since 1792 that U.S. coins will be struck outside a mint facility. On a stage set under a large tent on the plaza, actual mint presses transported from Philadelphia will be operated for Treasury officials and Members of Congress to strike the \$1 silver "House" coin and the \$5 gold "Senate" coin. Surcharges received from the sale of these coins minted on the plaza will be deposited in the Capitol Preservation Fund to be available to the Capitol Preservation Commission for the restoration and the improvement of the U.S. Capitol.

After the official ceremony, Mr. President, and continuing through the following day, June 15, 1989, Members of Congress will continue the "first striking of coins" that will be donated to nonprofit organizations of the Members' choice in their State or in their congressional district.

Again, all Members of Congress are urged to attend this most historic

● This "bullet" symbol identifies statements or insertions which are not spoken by a member of the Senate on the floor.

event on today, June 14, 1989, at 10:30 a.m. to increase public awareness of the Congressional Bicentennial and to assist with the preservation of the U.S. Capitol.

Finally, once again, Mr. President, all staff members are cordially welcome.

Mr. President, I reserve the remainder of the leaders' time on both sides.

### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

The Senator from Indiana is now recognized.

(The remarks of Mr. COATS pertaining to the introduction of S. 1174 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. PRYOR. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The absence of a quorum having been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

### TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 1,551st day of Terry Anderson's captivity in Beirut.

A July 18, 1988, issue of People magazine provides a profile of Peggy Say, Terry Anderson's sister, and her efforts to secure his freedom. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

#### FROM A SENSE OF BETRAYAL, A CRUSADE IS BORN

After the debris from an Iranian Airbus carrying 290 people hurtled into the Persian Gulf, Peggy Say found herself hoping desperately that her brother, Terry Anderson, held by terrorists since March 16, 1985, would not be the disaster's next victim. Rumors of his impending execution began circulating almost immediately after the downing, and Say tried to console herself with what his captors, the Islamic Jihad, had once announced: That unless a threat of execution were accompanied by the release of a photograph, the threat should not be taken seriously.

Still, after three years of crusading for Anderson's freedom, Say knew that there were no guarantees: "If Terry were killed, I would have to question our Administration's

role, or lack of it, in prolonging the hostages' captivity and putting them in a position to be endangered by outside acts. I would always feel frustration and anger over his death, but the ultimate blame would have to be on the people who actually did it."

Since the capture of her brother, chief Middle East correspondent for the Associated Press, anger and frustration have been Say's constant companions. She has seen hopes for his release dashed at the 11th hour, and has had eagerly awaited meetings with Middle East leaders canceled abruptly. She has experienced apathy and, at times, hostility from the American public, and she believes the U.S. State Department has been guilty of neglect. Yet none of this has deterred Say, 47, from continuing her fight. "The reality is that I have a brother whom I care about very much, and I have to do what I can to get him out," she says. "What is my choice? To say, 'Terry, I'm sorry this happened to you, but I have a life to live?'"

Say has phoned the State Department daily in the hope of receiving fresh news and met once with President and Vice-President Bush. With the help of the Associated Press, which has paid all her related phone bills and traveling expenses, she has spoken to church groups, grade school assemblies and innumerable reporters, despite the State Department's wish that she would simply keep quiet. "The job of the families is to try to get enough people to care enough to keep [the hostages] alive," she insists.

Because she has challenged the government's strategy of quiet diplomacy, her message inflames almost as often as it inspires. A veteran of call-in radio shows and the TV talk circuit, Say is often blamed for prolonging her brother's captivity. "Most of the time people say that Terry shouldn't have been [in Beirut] in the first place, and that if I had just kept my big mouth shut, he would have been out a long time ago," she says. The criticism intensified after the Iran-contra scandal, when members of the White House staff were caught attempting to swap arms for the release of some of the hostages. "The impression was that we [the hostage families] drove Reagan to it," she says. "I got letters saying, 'Your brother should die and you should die.' But every ex-hostage has told me with no uncertainty that it is publicity that kept them alive."

Far from crediting the Administration with exhausting every means to obtain the hostages' freedom, Say feels she and her brother have been betrayed. "The first year, I really waved my flag and kept quite like they wanted," she says. "The State Department told me that they didn't negotiate with terrorists and I believed them." But when talks between the U.S. and Syria led to the release of 39 Americans aboard hijacked TWA Flight 847 in July 1985, and a Soviet spy was swapped for journalist Nicholas Daniloff the following year, Say felt deceived. She has considered the Administration an adversary ever since.

The special bond that Say feels for her brother was formed only within the last 12 years. "When I left home at 17, he was just a 10-year-old, pain-in-the-back little brother," she says. Brother and sister rediscovered one another in 1976 during one of Terry's leaves from his assignment in Beirut. Say, by then divorced, was enrolled in college in Florida and was the co-founder of a coalition to help migrant workers. "We were surprised to find out that we were both idealists," she says. "We wanted to change the world and make it a better place."

After Terry's abduction, Say dropped out of school and moved back to their hometown, Batavia, N.Y., with her second husband, David, a general contractor. Eventually they were joined in Batavia by Terry's Lebanese girlfriend, Madeleine Bassell. Seven months pregnant at the time of Terry's capture, Madeleine gave birth to their daughter, Sulome, on June 7, 1985. The two now live in Cyprus, while Anderson's older daughter, Gabrielle, 13, lives in Tokyo with her mother, Mihoko. (Mihoko and Terry were being divorced when Anderson was abducted, but the divorce cannot be finalized until his release.)

If and when Anderson is given his freedom, he will be stunned by all that has taken place in his absence. In 1986, both his father, Glenn, and his brother, Glenn Jr., were diagnosed as having cancer; they died within four months of each other. Say dreads the thought of telling her brother. "It's going to be one hell of a shock," she says. "The only letter we got out from him was all about family and a reunion with Dad and the brothers and sisters." Though she is comforted by reports from ex-hostages of Terry's extraordinary emotional and physical stamina, she met recently with the three French hostages who were freed last May 4 and was startled by their appearance. "Jean-Paul Kauffmann looked almost transparent to me, and his hands looked like the hands of a corpse," she says. "Yet it helped prepare me for what I'm going to see with Terry."

Still confident that she will see her brother alive again, Say is already preparing for the reunion. After three years in Batavia, she and her husband have moved to a cabin on a lake in southwest Kentucky, where they hope to escape the pressured existence they have known since Terry's abduction. "I want to be in the best shape we can be in to help Terry," says Say. "I know there will be a happy ending for us. But I just pray something positive comes out of this whole ordeal. If Terry gets out and then someone else gets kidnapped, all the pain and suffering will have been for nothing."

### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order of the Senate, morning business is closed.

### NATURAL GAS WELLHEAD DECONTROL ACT

The ACTING PRESIDENT pro tempore. The Senate will now resume consideration of H.R. 1722, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1722) to amend the Natural Gas Policy Act of 1978 to eliminate wellhead price and nonprice controls on the first sale of natural gas, and to make technical and conforming amendments to such act.

The Senate resumed consideration of the bill.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from New Jersey is now recognized to offer an amendment.

## AMENDMENT NO. 195

Mr. BRADLEY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. BRADLEY] proposes an amendment numbered 195. Insert the following at the appropriate place:

## SECTION

The Federal Energy Regulatory Commission may require, by rule or order, any interstate pipeline to transport natural gas. Such rules or orders may be issued under both the Natural Gas Policy Act and the Natural Gas Act.

The ACTING PRESIDENT pro tempore. Time for debate on this amendment is limited to 1 hour to be equally divided and controlled by the Senator from New Jersey and the Senator from Louisiana.

The Senator from New Jersey.

Mr. BRADLEY. Mr. President, the reason I allowed the clerk to read the full amendment is so that everyone in the Senate could understand how brief this amendment is. It is a two-sentence amendment. It is straightforward. It very simply provides that the FERC will have the clear authority to require the transportation of natural gas by interstate pipelines. That is it. That is the amendment.

I will repeat it once more.

The Federal Energy Regulatory Commission may require, by rule or order, any interstate pipeline to transport natural gas. Such rules or orders may be issued under both the Natural Gas Policy Act and the Natural Gas Act.

That is the amendment.

Mr. President, the issue of gas decontrol has been discussed a number of times in the past. Invariably the political debate is very divisive and emotional.

Here we have a natural gas decontrol bill on the floor of the Senate and progress has been swift, one might even say sudden, and it has been very quiet. In part, I think this is due to the general understanding that this legislation has largely been overtaken by events. There is very little gas remaining as price controlled gas. And in part I think this unexpected progress has resulted from the nature of the bill, which does not address any of the number of very vexing natural gas issues.

I really think it is doubtful, and I have done my informal poll over the last week during which the Senate has been debating this bill, that many Senators have heard much about the bill or know much about the bill.

Natural gas itself is a very complicated issue, I found when I got to the Senate in 1979, 1 year after the passage of the Natural Gas Policy Act, and I quickly discovered that there were three sacred documents in U.S. Government history. One, the Decla-

ration of Independence; two, the other, the Constitution; and, the third, the Natural Gas Policy Act of 1978. It was one of those things that we just were not going to touch.

So it is understandable that not much has been said about this bill. I, frankly, think that most parties, outside of producing interests, are supportive but are reasonably indifferent about the bill. Nevertheless, I hope that all Members of the Senate will listen closely to the arguments for the amendment that is now pending before the body.

This bill, if it passes, will represent the entire legislative record of significance on gas issues for the last decade—for the last decade.

There is now a consensus that gas prices will soon start to rise, regardless of the passage of the bill. When prices do rise you can be assured that consumers will lose their indifference to our involvement and record, and will become very interested in our actions.

Mr. President, I think it is crucial to add to this bill language that will demonstrate our interest and attention to the needs of the general public—meaning consumers. This amendment is targeted to one area of the market that has provided the greatest consumer benefit, and that is gas transportation.

Not a half dozen years ago, back in 1983, very little gas was sold other than by interstate pipelines. Well, since then, there has been a dramatic change. Today, over 70 percent of the gas sold is through direct purchases from producers. These sales, frankly, would not be possible without the reform of gas pipelines and the advent of what we call open access transportation. In itself, this shift in purchasing patterns is ample evidence of the opportunity created by increased competition in the gas transportation business.

Today's open access gas system has developed for a very clear set of reasons. It developed primarily due to the drop in oil prices in the mid-1980's. Once oil prices fell, many customers were ready to switch from their traditional reliance on gas to oil. They were ready to switch. And in order to hold on to the fuel-switchable customers, interstate pipelines created something called Special Marketing Programs, or SMP's, to allow competitive prices for these users.

So it is very clear what happened. What happened was interstate pipelines were supplying gas. The price of oil dropped. The customers of interstate pipelines decided that they would have to shift, and they began to shift to oil. Interstate pipelines said, "No, don't shift to oil. Let us give you special discounts, special marketing programs, so we keep you as our customers."

That is what began to happen in the mid-1980's. After that, the courts

struck down the SMP's. In other words, people who were discriminated against went to court. The court said, "No, these SMP's can't stand. You can't give this kind of discriminatory treatment to a few customers." After the courts struck down the SMP's as discriminatory, the Federal Energy Commission was able to develop a program of nondiscriminatory gas transportation, premised on voluntary participation in the pipelines.

In other words, what FERC says is, "You cannot offer it to a few. You have to offer it to all." So what FERC was able to force the pipelines to do was to transport gas for all customers on a nondiscriminatory basis provided they wanted to transport for any customers.

Well, in the very price competitive market of recent years, few pipelines have been able to resist the need to transport; otherwise, they would lose customers. Consequently, today, over 90 percent of the gas in this country moves over pipelines that have accepted open access blanket certificates from the FERC.

And I think that is an important point to make. The gas market is now largely moving with open access transportation through pipelines.

Since today's market is already tied, perhaps inextricably, to open access, I would have to say my amendment is far from revolutionary. It is already happening. Over 90 percent of the gas is now moving in exactly the way this amendment would contemplate the FERC insuring that it move. And since the amendment is discretionary, I argue further it is not revolutionary because FERC may require gas transportation. It does not say it must. It says it may. And so, Mr. President, it is hard to imagine that the adoption of this amendment would result in any adverse near-term market impact.

Notwithstanding this fact, I will reject arguments, as we get into this, that this amendment is therefore trivial. It is not trivial. The amendment would be a clear congressional acknowledgment of the merits and need for an open-access system.

In this bill, Congress is endorsing the concept of complete gas deregulation and it is endorsing, fundamentally, the ideology of free markets. However, a competitive market at the well-head is irrelevant without a competitive gas transportation system.

Without open-access, it is like saying to the producers: "The good news is decontrol. You can sell gas at any price. The bad news is you can only sell to one buyer."

Mr. President, the second point I would make is this amendment will clearly state the authority of the FERC to mandate gas transportation. While some maintain that the FERC has this authority today, I am con-

vinced that FERC's powers need to be more clearly stated. And that is what this amendment does.

Although the overwhelming majority of pipelines are open access transporters, this in and of itself does not guarantee a competitive environment. Associated with the transportation are a myriad of terms and conditions which are in effect negotiated between the pipeline and the FERC. In today's very price competitive market, the FERC enjoys a greater leverage to protect the public interest. The pipelines need the gas to go through; therefore, they open it up. On the other hand, should gas supplies tighten or should oil prices rise, the bargaining power of the FERC will shift away and it will shift away from consumers generally.

With this amendment, the FERC has the clear authority—authority—to prevent any backsliding into an anti-competitive activity. In other words, the FERC has the capacity, should oil prices skyrocket or gas get tight and pipelines want to negate contracts and petition FERC to do so or go to courts to do so, the FERC under this amendment has the authority to protect the open access transportation system.

Mr. President, I know that there will be a number of arguments made against this. I think maybe we ought to put one thing very clearly on the record at the beginning, and that there are many ancillary issues that are not addressed by this amendment. And, frankly, they are not addressed because they would be, I think, much more controversial than this amendment.

In 1983, when I first pursued the issue of contract carriage, or open access transportation, my open access language was adopted by the Senate Energy Committee. In 1983 the language that was adopted, the bill that was adopted, was vastly more comprehensive than what is presented here. It dealt with a variety of issues: bypass, take and pay, abandonment, rate design. Today the amendment that is before the Senate is much, much more narrowly drawn, and I have purposely sidestepped those issues to avoid complicating the debate.

Mr. President, the distinguished Senator from Louisiana noted in the Energy Committee markup that the gas decontrol bill, in his words, is "not exactly cosmic legislation." Well, this amendment I would say, in the spirit of the chairman, is not cosmic either. In other forms, this concept—the idea of open access transportation—has been embraced by most consumer groups, and frankly by most producer groups. The Reagan energy proposals of the 99th Congress and 100th Congress endorsed open access transportation. There are a number of other groups who support this amendment.

I have a letter here from the AARP which is opposed to the deregulation bill but supports this amendment because they know it will mean lower gas prices to elderly Americans.

I also have the endorsement of this amendment by consumer groups such as a Consumer Federation, Citizens Labor-Energy Coalition, and the AFL-CIO.

So, Mr. President, this is an issue which has been widely embraced, everywhere from the Reagan administration energy proposals to the AARP and the AFL-CIO.

Mr. President, the Senate must give this decontrol legislation the attention it deserves. The House has already passed the bill. The effort to pass gas decontrol legislation will not be sabotaged by the adoption of this amendment. On the contrary, the bill will be strengthened.

As it stands now, there is no substantial reason why American consumers should support this legislation. Adoption of this amendment could very well change that circumstance.

Mr. President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, first of all, I would like to make clear with my friend from New Jersey, what is it that this amendment seeks to do that present law does not do? For the record, 20 or 21 of the 23 major interstate pipelines presently have open access carriage under rules promulgated by the FERC and upheld by the D.C. circuit. The remainder of the pipelines have pending applications to become open access carriers, and it is only a question of time. So that all carriers, all pipelines, will, in very short order, be open access carriers.

So, my question to my friend from New Jersey is: What does he seek to do substantively that is not done under the law right now?

Mr. BRADLEY. Well, I would answer the question of my colleague from Louisiana by a series of questions and answers, and by direct statement.

What I seek to do now is very simply, as the amendment says, give the FERC the authority to require, by rule or order, any interstate pipeline to transport natural gas and to make it clear that FERC has that authority.

In the existing circumstances, where there are contracts negotiated between the pipeline and FERC, there is some potential for discrimination.

The pipelines now offer discounts from FERC-approved rates. Does everyone, for example, get discounts? Or does everyone get the same discount? The answer is "No."

Could these discounts that are now offered in negotiations become a mechanism for discrimination? It could be. For example—

Mr. JOHNSTON. If I may ask—

Mr. BRADLEY. If I may just finish? What if the pipeline offers you a better rate if you buy gas from their marketing affiliate? Yes, that could be done. That is a kind of discrimination.

Could this sort of discrimination occur even in the context of today's open-access program? I would have to say yes, it could occur in the context of today's open-access program.

So, on the one hand, this is an amendment that is to give the FERC some authority, in a negotiated environment, that it does not have now. However, the primary purpose here is to give the FERC the authority to protect an open-access environment, and market, if energy situations dramatically change.

For example, up to now it is a total voluntary arrangement between the FERC and the involved pipelines. If oil prices go back up, or if gas markets become very tight, we could see a number of pipelines seek to, essentially, get out of their open-access agreements. They could do that.

Mr. JOHNSTON. If the Senator would yield, there will be time left for us to argue whether this is a good thing or bad. I want to narrow in on the question of whether there is any difference in the authority which he seeks and the authority which the FERC presently has and is exercising. Is it not a fact that the FERC presently considers itself to have the authority to deal with those things you talked about: discrimination, discounts, all of that? Do they not have the authority? And the amendment of the Senator does not deal with that, does it?

Mr. BRADLEY. Well, if the FERC already has this authority there should be no objection to the amendment because it is just a restatement of what authority they already have.

Mr. JOHNSTON. That is part of the argument that we will make. I am just trying to narrow in: does the Senator concede that FERC thinks they have the authority to do all of those things relative to discrimination and discounts that you say?

Mr. BRADLEY. I would say that the FERC does not have the full authority to do everything that my amendment contemplates. This is an explicit statement.

Mr. JOHNSTON. And what things, would the Senator tell me, would he seek, that his amendment would give them the authority to do?

Mr. BRADLEY. My amendment seeks to give them the authority, if market conditions change, to protect an open access system. That means that they could step in.

Mr. JOHNSTON. What the Senator is saying is he is afraid that if pipelines decide they want to get out of this, they can more easily get out of

the present situation than they could out of his system.

Mr. BRADLEY. That is correct—than they could get out of the system as contemplated by this amendment.

Since they have accepted open access blanket certificates, one argument that my colleague might make would be that, well, they are not going to get out. They have deals and contracts. But, they might very well choose to get out. They might petition FERC. They might go to the courts. They might do a number of things.

Mr. JOHNSTON. Is not the concern of my colleague really that he is afraid that either FERC will change its mind or the court will change its mind and that what the FERC is doing will not be continuing?

Mr. BRADLEY. That is correct.

Mr. JOHNSTON. The Senator is not worried about FERC either not having the authority or not feeling that they have the authority now and not exercising that authority?

Mr. BRADLEY. No. My understanding is that one of the Commissioners, Commissioner Stalon, for example, he has said very clearly that he does not think that FERC has the explicit authority to mandate transportation. This would make it very explicit that FERC does have the explicit authority. It would remove the ambiguity that exists in the minds of some of the Commissioners.

Mr. JOHNSTON. Mr. President, I appreciate my friend from New Jersey for, I think, narrowing these issues.

Mr. President, we very strongly oppose this amendment, first, because the problems which it would present would destroy the unanimity of support for natural gas deregulation. This bill is presently supported by a wide group of people, including consumers represented by the local distribution companies, which do represent the consumers, all the way up through the pipelines and all the rest. They would certainly oppose the bill if this amendment were proposed.

Why would they oppose it? First of all, they would oppose it because of the vast uncertainty which this amendment would present, the litigation which it would surely provoke, all of the difficult questions that would be presented by it.

What difficult questions would be presented by this amendment? I guess the most difficult, Mr. President, is the question of bypass. Bypass is probably the most controversial issue now before the FERC. What bypass means is the right of an industrial load to make a direct contract with a supplier, the producer of natural gas, utilizing a pipeline as an open access carrier and thereby bypassing the local distribution company.

The local distribution companies regard this as scraping the cream off the natural gas glass, leaving them

with the more expensive load; that is, consumers.

By the way, why residential consumers would be for promoting bypass I do not know. Indeed, it is clearly against the interest of residential consumers to be promoting bypass because the way it works now, Mr. President, is the big industrial loads being the most lucrative of contracts, those contracts help support the residential consumer. It is relatively cheap to support the industrial load and, consequently, they are very profitable. So to the extent the industrial consumer is able to make his deal directly with the producer utilizing the pipeline as an open access carrier, then they are taking profit away from the local distribution company, requiring, in effect, that residential consumers pay a greater portion of the distributor's cost in the form of higher rates.

What is the present rule? The present rule under FERC is that bypass can be allowed only to the extent that the industrial load is able to make a case before FERC in a contested proceeding where the local distribution company is able to make its case and show that it is in the public interest and necessity to do the bypass. All of those factors about the effect on residential rates would be open to discussion before the FERC, as well as the nondiscriminatory arguments which the industrial load would make.

It is unclear the precise limits as to how far FERC will go in allowing bypass. Suffice it to say that it is presently greatly limited in scope, subject to argument, subject to a contested case on both sides so that the residential people, as represented either by direct intervention or by the local distribution companies, are able to make their case in favor of residential customers in the FERC.

What this amendment would do by granting an unqualified right—I suppose an unqualified right—to a nondiscriminatory carrier could well be construed as changing the burden of proof on bypass. In any event, it puts in question the present way of doing things. That is the principal difference I can think of between this amendment and others. If it is not to change bypass, then what is it to change? Mr. President, I simply do not know. We are told by the FERC, in a letter dated June 12, 1989, to me from Martha Hess, who is Chairman of the Federal Energy Regulatory Commission. She says in part as follows:

In my view, the Commission already possesses—as the D.C. Court of Appeals in the AGD decision acknowledged—sufficient authority concerning gas transportation. This is evidenced by the fact that 20 of the major 23 interstate pipelines are now open access transporters, and the other three have filed to become open access transporters. . . . Simply put, open access is a fact of life in the gas industry.

Mr. President, I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

FEDERAL ENERGY REGULATORY  
COMMISSION,

Washington, DC, June 12, 1989.

HON. J. BENNETT JOHNSTON,  
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As legislation to remove the remaining wellhead price controls on natural gas is considered on the Senate floor, I thought it might be useful to reiterate my support for enactment of decontrol legislation.

As you know, I have long been on record as supporting total wellhead decontrol. I believe the nation's energy needs are best served by permitting competitive forces to work through the marketplace in order to maintain the appropriate balance between supply and demand. Passage of a decontrol bill would remove unnecessary and outmoded restraints on natural gas so that the nation's energy future may be guided to the greatest extent possible by the market. The beneficiaries of a competitive natural gas market will be the nation's natural gas consumers.

The general consensus that has emerged in support of a stand-alone decontrol bill—which seemed all but impossible a few short years ago—might evaporate if additional gas issues are addressed in this legislation. And while there may be other issues that could be considered, I believe the benefit to the nation that would result from passage today of a single issue bill far outweighs the highly unlikely possibility that a multi-faceted bill might be enacted.

Nor are additional amendments necessary to enable FERC to ensure a competitive gas market. For example, I understand that the Senate may be asked to consider amendments addressing the FERC's authority over gas transportation. In my view, the Commission already possesses—as the D.C. Court of Appeals in the AGD decision acknowledged—sufficient authority concerning gas transportation. This is evidenced by the fact that 20 of the major 23 interstate pipelines are now open access transporters, and the other three have filed to become open access transporters. As a result approximately 90 percent of the nation's interstate natural gas throughput is current on open access pipelines. Simply put, open access is a fact of life in the gas industry.

Acceptance of a blanket certificate obligates the pipeline to transport gas for any shipper, assuming capacity is available. Once a pipeline accepts a blanket certificate, it cannot lawfully cease transportation without applying for abandonment from the FERC. The Commission would then, only after reviewing the position of all interested persons, have to determine whether abandonment of the blanket certificate was in the public interest.

Thus, in light of the number of pipelines currently providing non-discriminatory transportation service, I believe the public will be well served by enactment of a stand-alone decontrol bill—and would be disserved if no bill is passed.

I applaud you and your colleagues for considering this important bill. I urge all interested parties to seize the moment and work together to reach a consensus position so

that we can finally achieve the elimination of unnecessary price controls.

Sincerely,

MARTHA O. HESSE.

(Mr. BRYAN assumed the chair.)

Mr. JOHNSTON. Mr. President, the Chairman of the Federal Energy Regulatory Commission now says they have the authority. That authority is now either being exercised, in the case of over 90 percent of the gas, or will soon be exercised on behalf of all pipelines.

Question, Mr. President: Once a pipeline comes under this system, can they change their mind? The answer, Mr. President, is no, not without getting an abandonment certificate from the Federal Energy Regulatory Commission.

In other words, you do not have to submit yourself to open access as every single pipeline in America has asked to do, but once you are certificated as an open access pipeline, then you may not thereafter change your mind unless the FERC gives you a certificate allowing you to do so.

Why are all 23 major interstate pipelines in America seeking open access? Well, some I guess think it is a good way to do business, but there is a large degree of compulsion, frankly, in the FERC rules requiring them to become open access carriers because what the FERC has said by rule is that their section 7 certificates, which is the basic certificate to transport gas, would have to be renewed every single year unless they are open access carriers.

There is a huge cost associated with a proceeding to renew a section 7 certificate and a large degree of uncertainty. I think the D.C. court said it is like the difference between death by hanging or death by electrocution. In other words, you have a choice as to whether you want to become an open access carrier but, by the way, you have to become an open access carrier. In other words, they put such serious sanctions on not becoming an open access carrier that every major pipeline in America became one and will continue to want to be one, and in case they change their mind, they cannot change their mind because FERC has the final veto power anyway.

Mr. President, to say that there is not authority is to be contrary to the law. The Chairman of FERC says they have authority, full authority; the D.C. Court of Appeals has said they have authority, has in effect upheld that authority, and the constraints of that authority are such that every major pipeline in America has asked to become jurisdictional as an open access carrier.

Every major pipeline in America as a practical matter must ask to do so because to do otherwise would make them competitively disadvantaged, and they cannot change their minds

because in order to change their minds they have to get an abandonment certificate from FERC.

So, Mr. President, there is total and complete authority right now, not only available to be exercised by FERC but which is being exercised by FERC.

So what are we really arguing about? Well, we are arguing principally about uncertainty, and about the coalition behind this bill, because of the uncertainty it would present. You come in with a new law and everyone wonders, what is being changed. They say, "Well, I don't know. It must be open access." And so that takes support away from the bill by the local distribution companies. Local distribution companies representing consumers do not want their consumers to be disadvantaged by allowing or by inference requiring complete bypass jurisdiction. Local distribution companies representing consumers want the pipelines to have to come in before FERC and make an adversary showing subject to their right to be heard, to show that it would raise the rates of consumers, as they do at present, and not simply to be able to scrape the cream off the milk by going straight to open access carriers.

How much of an issue is it? Mr. President, there is a letter from the American Gas Association to Senator BRADLEY, a copy of which I have, dated June 7, which says in part, as follows:

This is not a controversial amendment and may hurt residential and commercial customers by promoting bypass. The issue of pipeline bypass of an LDC to serve that LDC's best end use industrial customers is one of the most controversial issues facing the gas industry. Many States and State public utility commissions firmly believe that bypass raises issues of State, not Federal, jurisdiction. By giving FERC the power to order transportation, at any time and in any situation without consulting the States, your proposed amendment appears to ratify FERC jurisdiction over bypass cases. Such a position is very controversial and, if adopted, would have an extremely detrimental effect on LDC's and their commercial and residential customers.

Mr. President, the letter goes on to talk about other bases on which the American Gas Association opposes this amendment, but what the American Gas Association through Bud Lawrence as president says is that this is a highly controversial and difficult amendment.

Mr. President, I ask unanimous consent that a copy of this letter be printed in the RECORD.

There being on objection, the letter was ordered to be printed in the RECORD, as follows:

AMERICAN GAS ASSOCIATION,  
Arlington, VA, June 7, 1989.

HON. BILL BRADLEY,  
U.S. Senate, Washington, DC.

DEAR SENATOR BRADLEY: The American Gas Association (A.G.A.) has long supported voluntary open access transportation of nat-

ural gas. We oppose, however, any mandatory transportation amendments to S. 783, including your proposed amendment.

We oppose your proposed amendment for the following reasons:

1. This is a mandatory carriage amendment and raises all the complex and controversial issues that mandatory carriage of natural gas brought to the fore in previous natural gas debates, notably in 1986-84. Indeed, it is 180 degrees opposite from the voluntary open access program FERC adopted three years ago in Order 436. That program is working well. Although the proposed amendment does not require FERC to act, the essence of mandatory carriage is, and always has been, whether to increase the burden of federal pipeline regulation by giving FERC outright power to mandate natural gas transportation throughout a million mile transmission network.

2. Pipelines cannot arbitrarily stop transporting gas now that they have FERC blanket certificates. Section 7(b) of the Natural Gas Act of 1938 already prevents pipelines from discontinuing open and nondiscriminatory transportation under their blanket certificates, without prior notice, hearing, and specific FERC approval.

3. This is not a noncontroversial amendment and may hurt residential and commercial customers by promoting bypass. The issue of pipeline bypass of an LDC to serve that LDC's best end use industrial customers is one of the most controversial issues facing the gas industry. Many states and state public utility commissions firmly believe that bypass raises issues of state, not federal, jurisdiction. By giving FERC the power to order transportation, at any time and in any situation without consulting the states, your proposed amendment appears to ratify FERC jurisdiction over bypass cases. Such a position is very controversial and, if adopted, would have an extremely detrimental effect on LDCs and their residential and commercial consumers.

4. Giving FERC the power to order transportation has always raised many difficult issues about pipeline operations and construction, which are not even acknowledged by the proposed amendment. These issues include whether FERC would order transportation: (1) when there is no contract between the pipeline and shipper; (2) when the pipeline is already operating at capacity; (3) when new facilities would have to be constructed; and (4) when other shippers, especially LDCs, have priority access to pipeline sales or transportation.

None of these complex issues are addressed, yet each raises many questions. For example, the Natural Gas Act does not permit FERC to order a pipeline to build new facilities, yet this proposed amendment could conflict with the NGA if FERC were to order transportation in an instance where new construction, such as a tap or interconnection, was required for the service.

Politically each segment of the natural gas industry—pipeline, LDC, producer and end user—agreed to forego special interest amendments to advance the cause of well-head decontrol.

It is for these reasons, Senator BRADLEY, that we are opposed to mandatory carriage legislation of the type you are proposing.

Sincerely,

GEORGE H. LAWRENCE.

Mr. JOHNSTON. Mr. President, on this question of bypass, I stated a minute ago that the LDC's want to keep that right to appear before

FERC. Frankly, they also want the right to litigate it, to throw out the bypass authority altogether.

I do not know where that litigation would finally settle out, but suffice it to say this amendment would have some uncertain effect and is regarded as having a definitive effect upon that issue of bypass.

This whole issue open access sounds very simple on its face. This amendment is just a couple of sentences. I will recall back a few years ago—it was 1983—we had natural gas deregulation before the committee, and my dear friend from New Jersey [Mr. BRADLEY] proposed an open-access amendment at that time.

We dealt with that issue for 31 markups. What started out as an apple pie amendment we finally realized was a sticky wicket. When you say open access, then just what do you do in a pipeline where there is limited capacity and there are more vying for the right to transport than there is space, how do you decide who transports? How do you decide at what price? How do you decide priority among customers? How do you decide questions about, for example, if something needs to be constructed in order to be able to transport, can you order that construction? How do you decide priority of access among different classes of customers? What is the proper operating capacity of a pipeline and who decides that? Then you get into all these questions of take-or-pay which the Federal Energy Regulatory Commission did not get to in their first order, which was order 436. They were dealing with this question of open access, and they in effect ruled that you could have open access, but it went up on appeal and the court said you cannot deal with open access without dealing with take or pay. They remanded the case and that is when the FERC dealt in order 500 with the question of take-or-pay because the two are very interrelated.

If the Senate thinks it can get into this issue with a simple two-sentence amendment and resolve and make clear that which has been very controversial, very difficult, very complicated, a whole area of natural gas common law in effect which has grown up over the years at FERC and in the courts, if the Senate thinks it can improve that situation by this amendment, it is greatly mistaken.

Mr. President, the amendment comes from a good and proper desire but it would be more mischievous than good. I see my dear friend from Idaho on his feet.

Mr. President, how must time remain?

The PRESIDING OFFICER. Five minutes twenty-three seconds.

Mr. JOHNSTON. I yield 3 minutes to the Senator from Idaho.

Mr. McCLURE. Mr. President, I rise in strong opposition to the amendment offered by the senior Senator from New Jersey which gives the Federal Energy Regulatory Commission the authority to compel interstate pipelines to transport natural gas for others.

While this amendment appears benign, it would create many problems. But before I discuss these problems, Mr. President, let me first point out that the amendment is unnecessary.

It is claimed that his amendment is needed in order to ensure that interstate pipelines become, and continue to serve as, transporters of natural gas for others. However, as the sponsor of the amendment is aware, virtually every major interstate pipeline is today already an open access transporter.

In testimony before the Committee on Energy and Natural Resources, the chief of staff of the Federal Energy Regulatory Commission reported that 20 of the 23 major interstate pipelines are today open access pipelines, and that the other 3 are in the process of becoming open. As a result, over 90 percent of the Nation's interstate natural gas is today carried on open access pipelines. In total there are 84 pipelines participating in the open access program and 51 pipelines providing NGPA section 311 gas transportation.

It is important to note, Mr. President, that these pipelines voluntarily elected to become an open access transporter—they could not be forced to do so as there is no compulsory authority available to the Commission. Obviously, these pipelines, in their best business judgment, have decided that it makes more sense to transport gas for others than to refuse to do so.

Thus, I find less than persuasive the argument that the compulsory authority proposed to be created by this amendment is necessary in order to ensure that pipelines will transport natural gas for others.

It has also been argued that this authority is necessary in order to ensure that pipelines who have voluntarily elected to become an open access transporter will not change their mind at some future date and close their system to transportation. While this is an interesting theoretical argument, it is one which ignores that way existing law and the regulatory system work.

Under the Natural Gas Act, once a pipeline accepts a certificate to transport natural gas, the only way that it can cease to transport is by obtaining an abandonment for the certificate under section 7(b) of the Natural Gas Act.

While the Commission can grant abandonment, it can do so if, and only if, it concludes through a formal administrative proceeding that such

abandonment is in the overall public interest. That action, I might note, would be subject to formal appeal and, ultimately, review by the Federal courts.

In this Senator's opinion, it would take an extraordinary stretch of the imagination to believe that the Commission—to say nothing of the pipeline's customers—would be interested, or willing, to let a pipeline turn back the hands of the clock. Moreover, as each of these pipelines voluntarily elected to become an open access transporter, there is no reason to believe that they would have any interest in ceasing to be an open access transporter. In fact, in the 4 years since the Commission's open access transportation program has been in effect, not one pipeline has sought abandonment of a blanket certificate.

But more significantly, Mr. President, this amendment could have many adverse effect, only some of which we can now foresee. In this connection, I might note that the committee has not held 1 day of hearings on this proposal; it wasn't even mentioned at the committee's May hearing on the pending legislation. And the last time the committee fully considered this issue was back in 1983, and it then took the committee some 20 business meetings to iron out all of the wrinkles—and those wrinkles took 29 pages of statutory text.

Mr. President, with an amendment of this potential significance I, for one, would prefer that it be handled through the normal legislative process instead of by this short circuit approach.

Mr. President, this amendment does not simply give the Commission the authority under existing law to make mandatory that which it is now authorizing on a voluntary basis. It instead creates brand new, free-standing statutory authority—and that creates problems. Let me explain.

There are two different types of gas transportation now being performed by interstate pipelines. The first is that which is occurring pursuant to the blanket certificate program, also known as Order No. 436/500 open access transportation. More technically, it is the transportation of natural gas by interstate pipelines for others pursuant to a certificate of convenience and public necessity granted under section 7 of the Natural Gas Act. The Natural Gas Act, the Commission's regulations implementing the act, case law, and court decisions over the past 50 years have all defined what can and cannot be done pursuant to this authority.

The second type of transportation is that which is occurring pursuant to section 311 of the Natural Gas Policy Act, which is transportation authority entirely separate and apart from the

Natural Gas Act's transportation authority. Under section 311, transportation may be undertaken by interstate pipelines only on behalf of local distribution companies.

While the NGPA section 311 authority has been around only since its enactment in 1978, the terms and conditions for transportation under this section have been made generally comparable to that undertaken under the Natural Gas Act. However, unlike Natural Gas Act transportation, section 311 transportation is available only to local distribution companies and no one else.

Now the amendment offered by the senior Senator from New Jersey does not simply give the Commission the authority to make mandatory the voluntary transportation authority established by the Natural Gas Act and the Natural Gas Policy Act; it instead creates a brandnew, freestanding, and totally undefined transportation authority. The amendment's references to the Natural Gas Act and the Natural Gas Policy Act are only with respect to the procedures for issuing transportation orders, and not with respect to the terms and conditions of transportation to be performed pursuant to the new authority.

Let me emphasize that point: this amendment creates brand new, freestanding authority without limit or definition. Things which could not occur under existing law, could occur under this amendment. For example, the Natural Gas Act requires that transportation be in the public convenience and necessity, be not unduly discriminatory, and have rates that are just and reasonable. This amendment requires none of these.

Similarly, this amendment expands without limit the Natural Gas Policy Act's section 311 transportation authority which, as I previously noted, is currently limited by law to transportation of natural gas only on behalf of local distribution companies.

It would appear that the Commission, using the authority provided by this amendment, could order transportation to occur which is not in the public convenience and necessity; it could order transportation which is unduly discriminatory; and it could order transportation to occur at rates that are unjust and unreasonable. That doesn't seem like a very good idea to me.

Moreover, as I interpret this amendment, it would provide the Commission the authority to order and direct pipelines to construct facilities and to condemn the private property necessary to construct those facilities, and to do so without regard to environmental consequences or the possibility of lower cost or lower impact alternatives. Now that certainly doesn't seem like a very good idea to me.

While I do not believe that the author of the amendment intends these results, it is clear that this could be the outcome if this amendment is adopted.

Mr. President, I am also concerned that this amendment would bring about the problem of unfettered bypass of local distribution companies, which is already an issue of considerable concern and controversy. While I would oppose an amendment which proposes to restrict local distribution company bypass, I similarly would oppose an amendment, such as this, which would expand it without limit or regulatory oversight.

And finally, there are technical deficiencies with this amendment. For example, the Natural Gas Act does not use the term "interstate pipeline," it uses the term "natural gas company." Thus, it is not clear how the Commission and the courts would interpret this amendment with respect to transportation ordered under the Natural Gas Act's procedures.

Mr. President, I understand the author's intent—that of encouraging and continuing open access transportation by interstate pipelines. I believe that open access transportation is in the overall public interest, and I too want to see it continue and expand. However, I do not believe that his amendment in fact promotes that result, but instead could cause serious harm.

The American Gas Association, which represents local distribution companies, agrees. In a letter to me dated June 8, 1989, Mr. Bud Lawrence, the president of the American Gas Association which represents 200 local distribution companies throughout the United States, expressed the AGA's opposition to the Bradley amendment. The letter states that this amendment may "hurt residential and commercial customers."

Mr. President, it is for these reasons that I oppose the amendment and urge my colleagues to vote against it.

Mr. President, the point that I think is worth emphasizing is the complexity of the issue that is attempted to be addressed by what seems to be a very simple and innocuous amendment. As the chairman noted, a few years ago, in 1983 and 1984, when this matter was before the committee, at the time I was chairman, it was the subject of numerous markup sessions as well as the subject of a number of hearings with dozens of pages of testimony with respect to this particular provision. And lest anybody believe it is a simple matter, aside from the length of time it took the committee to deal with this issue in 1983, it resulted in a text of 29 pages to express the committee's conclusions of how to accomplish this. If anybody is interested in history, just look at S. 1715 that was reported by the committee, 29 pages of which are the result of this very subject. It is an

extremely complex, difficult, and convoluted subject matter that cannot be dealt with in a two-sentence amendment, no matter how well intentioned, that says to the Federal Energy Regulatory Commission, "go do something good."

That is in essence what the amendment says, that you, FERC, should go do something good about this subject matter with no standards, no processes, no ultimate result defined in the amendment. That is the danger of the amendment. There is no just and reasonable cause. There is no public necessity requirement. There is no standard by which FERC should judge that question. It is a total abdication of congressional responsibility to an administrative agency, in saying to the administrative agency, "OK, we give up; you go do something that you think is right." And that, to me, is the essence of irresponsible legislation.

Let me refer to just one other matter. It has been mentioned by the distinguished Senator from New Jersey that his amendment is supported by the AARP. I am not certain. I am sure he knows more about their position than I do, but let me read their letter. I assume it is the letter of June 9, 1989, addressed to the Honorable HOWARD METZENBAUM, U.S. Senate, in which they identify in the fourth paragraph that they support the amendment to be offered by Senator BRADLEY.

I wonder if they had in mind this amendment or some other amendment because I also read in the third paragraph in their letter their absolute concern about what would happen if large industrial users of natural gas could bypass local distribution networks. That is in the AARP letter. That is not only permitted but is probably the only consequence of the Bradley amendment. Everything else has been done.

Mr. President, I ask unanimous consent that the letter from the AARP be placed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AMERICAN ASSOCIATION OF  
RETIRED PERSONS,  
Washington, DC, June 9, 1989.

HON. HOWARD METZENBAUM,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR METZENBAUM: On behalf of the American Association of Retired Persons, I am writing to express the Association's opposition to the Natural Gas Deregulation Bill (H.R. 1722) in its present form. This legislation would end all remaining federal regulation of gas prices at the wellhead, action which will provide clear benefit to the U.S. gas industry. However, no similar benefit will accrue to consumers, despite the loss of protection against the rising cost of energy.

With any legislation to decontrol "old gas," AARP believes that other natural gas policy issues should be addressed:

The ability of large industrial users of natural gas to "bypass" local distribution networks can result in cost shifts to residential customers, who have no choice but to pay higher prices. Action is needed to correct this inequity.

Nondiscriminatory access to gas transportation is crucial for a competitive marketplace. Today, the Federal Energy Regulatory Commission's (FERC's) open access policy, which has enabled many consumers to obtain cheaper gas, relies on voluntary compliance by pipelines. AARP supports an amendment to be offered by Senator Bradley which will give FERC the option of requiring the transportation of natural gas in order to ensure continued open access, even in the event of tightening gas markets.

Residential customers suffer from obligations incurred by pipeline companies in the past, such as "take-or-pay" clauses and "price escalators," which allow producers to keep charging very high prices and prevent current market forces from bringing prices down. Further deregulation of natural gas prices should include provisions to address this problem.

Energy prices remain one of the most volatile elements in the Consumer Price Index. If even modest increases are to be allowed, then added protections for consumers are essential.

Sincerely,

JOHN ROTHER,  
Director, Legislation, Research  
and Public Policy.

Mr. BRADLEY addressed the Chair. The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, both the distinguished chairman and former chairman of the Energy Committee recall with a certain air of wistfulness as well as a certain air of frustration the very long deliberations that took place in 1983 on natural gas. And it is precisely because of that experience, precisely because we spent endless hours getting into take or pay, getting into abandonment, getting into bypass, getting into rate design, getting into all of these issues, that we did not get a bill in 1983. Therefore, what this amendment does is to say look, those are all issues, that we did not get a bill in 1983. Therefore, what this amendment does is to say look, those are all issues that are not addressed by this amendment.

This amendment, for example, does not allude to nor does it intend to influence or alter in any way the Commission or the courts' activities with regard to the issues of bypass.

It is certainly not the intention of this Senator to legislate one of the most controversial issues in natural gas law, covertly, a little back door tactic. That is not the purpose of this amendment. If we are going to have a debate on bypass, then I think we ought to have a debate on bypass and get out all of the charts that will put everybody to sleep in this body except members of the Energy Committee

who have already been through this thing time and time again.

This amendment does not deal with bypass. Again, let me say it does not allude to nor is it intended to influence or alter any proceedings before the FERC or any litigation before the courts. So the arguments that have been made about bypass might be relevant to another amendment, but they are not relevant to this amendment.

It is very skillful for the opponents of this amendment to construe this threat of rates going up for local distribution companies, et cetera. That is not what this does. That is not what this amendment says. This amendment is very clear.

A second point is that it is interesting if you look at the history of bypass that all those people who have for years argued for bypass, all of those people who indeed want to link directly the pipeline to the industrial user circumventing the local distribution company, all of those people who have supported bypass oppose this amendment. They oppose this amendment. They do not support it.

And many, if not all, of those people, consumer groups largely, who oppose bypass for the precise reason that the Senators eloquently stated—if you have bypass it will possibly raise rates on individual consumers—all of those consumer groups who have opposed bypass support this amendment.

So, Mr. President, you are kind of known by the company you keep. And the assertion that this amendment is going to dramatically raise rates for individual consumers is just not a fact. It is not in the language of the amendment. It is not contemplated by the author of the amendment. It is stated explicitly in the debate on the Senate floor that it is not an issue. And then the supporters of the amendment are the people who are the most vigilant in the protection of consumer interests in this country.

Mr. JOHNSTON. Mr. President, will the Senator yield, or would the Senator like to finish?

Mr. BRADLEY. I have one or two other points I would like to make.

Mr. President, an AGA letter was mentioned which I have not seen. I have seen a letter addressed to me. The Senator alluded to a letter sent to Senator METZENBAUM. It was also, I believe, sent to Senator BRADLEY. Maybe they sent two separate letters, I do not know.

There was a very interesting article in the Natural Gas Week just a few days ago where the author of this article calls the argument by the AGA a "canard."

I ask unanimous consent that the article be printed in the RECORD at this time, along with my letter, the letter from the AGA to me, along with the letter from the AARP.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN GAS ASSOCIATION,  
Arlington, VA, June 7, 1989.

Hon. BILL BRADLEY,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR BRADLEY: The American Gas Association (A.G.A.) has long supported voluntary open access transportation of natural gas. We oppose, however, any mandatory transportation amendments to S. 783, including your proposed amendment.

We oppose your opposed amendment for the following reasons:

1. This is a mandatory carriage amendment and raises all the complex and controversial issues that mandatory carriage of natural gas brought to the fore in previous natural gas debates, notably in 1983-84. Indeed, it is 180 degrees opposite from the voluntary open access program FERC adopted three years ago in Order 436. That program is working well. Although the proposed amendment does not require FERC to act, the essence of mandatory carriage is, and always has been, whether to increase the burden of federal pipeline regulation by giving FERC outright power to mandate natural gas transportation throughout a million mile transmission network.

2. Pipelines cannot arbitrarily stop transporting gas now that they have FERC blanket certificates. Section 7(b) of the natural Gas Act of 1938 already prevents pipelines from discontinuing open and nondiscriminatory transportation under their blanket certificates, without prior notice, hearing, and specific FERC approval.

3. This is not a noncontroversial amendment and may hurt residential and commercial customers by promoting bypass. The issue of pipeline bypass of an LDC to serve that LDC's best end use industrial customers is one of the most controversial issues facing the gas industry. Many states and state public utility commissions firmly believe that bypass raises issues of state, not federal, jurisdiction. By giving FERC the power to order transportation, at any time and in any situation without consulting the states, your proposed amendment appears to ratify FERC jurisdiction over bypass cases. Such a position is very controversial and, if adopted, would have an extremely detrimental effect on LDCs and their residential and commercial consumers.

4. Giving FERC the power to order transportation has always raised many difficult issues about pipeline operations and construction, which are not even acknowledged by the proposed amendment. These issues include whether FERC would order transportation: (1) when there is no contract between the pipeline and shipper; (2) when the pipeline is already operating at capacity; (3) when new facilities would have to be constructed; and (4) when other shippers, especially LDC's, have priority access to pipeline sales or transportation.

None of these complex issues are addressed, yet each raises many questions. For example, the Natural Gas Act does not permit FERC to order a pipeline to build new facilities, yet this proposed amendment could conflict with the NGA if FERC were to order transportation in an instance where new construction, such as a tap or interconnection, was required for the service.

Politically, each segment of the natural gas industry—pipeline, LDC, producer and end user—agreed to forego special interest

amendments to advance the cause of well-head decontrol.

It is for these reasons, Senator Bradley, that we are opposed to mandatory carriage legislation of the type you are proposing.

Sincerely,

GEORGE H. LAWRENCE.

[From Natural Gas Week, June 12, 1989]  
MANDATORY CARRIAGE: KILL IT NOW, TRY  
LATER

In the current Senate debate over natural gas wellhead price decontrol, conventional wisdom suggests that the clean bill that passed the House and a similar bill approved 17-2 by the Senate Energy and Natural Resources Committee eventually will be approved. But conventional wisdom isn't always right, and before the vote is taken, Sens. Howard M. Metzenbaum (D-Ohio) and Bill Bradley (D-N.J.) will have a chance to rewrite the bill.

Metzenbaum has a raft of amendments, including one seeking to recontrol gas prices. The debate on these is continuing. Bradley, on the other hand, appears to have only one—albeit a major one. This is to unequivocally state the power of the Federal Energy Regulatory Commission (FERC) to mandate non-discriminatory gas transportation.

Critics say Bradley's amendment is unnecessary because major pipelines already practice open-access, or the non-discriminatory carriage of gas owned by others. But open-access is not universal, it's not evenly applied and it's not equally open throughout the year. In short, it does not guarantee that a shipper can move gas from point A to point B at any time.

Actually, the only device that would accomplish all of that (with the exceptions of true force majeure conditions, of course) is common carriage. That's the way grain, chickens, small packages, oil and other commodities move in ordinary commerce. Bradley's amendment falls far short of that, as it only states that FERC can require a pipeline to carry gas. But even so, for a brief amendment that supposedly merely requires that which already is occurring, the senator's foray has drawn strong response from the pipelines.

One response, signed by all segments, including the pipelines, is that the decontrol bill was forged as a clean, one-issue bill and nothing should be added. All segments have pet issues, this argument goes, and thus a clean bill is not just a matter of procedure but a substantive decision—at some considerable political cost—to agree to pursue that one goal.

Frankly, that's a good argument. Deals are cut every day, a process that is not helped by post-handshake greed and back-sliding. Even in a city up to its collective eyeballs in sleaze from the White House to Capitol Hill, a handshake should stand for something. All parties had an opportunity in creating the decontrol bill; now, all parties should support it.

Another response to the Bradley proposal, however, is intriguing in its construction. The American Gas Association, which is financed by major pipelines as well as the local distribution companies (LDCs) generally associated with AGA, wrote Bradley last week to state its opposition.

AGA dislikes the Bradley amendment on two grounds: first, it calls for mandatory carriage and AGA opposes the regulation that would be required for this; and second, the proposal "may hurt residential and commercial customers by promoting bypass."

Thus, AGA merges the issue of LDC bypass with mandatory carriage to protect both of its constituencies. Interestingly, when last heard from, the AGA was officially neutral on the subject of bypass, which pits its pipeline members against its LDC members (NGW, 5-29-89, p.1).

The AGA raises the canard that some people believe bypass is a state issue and that Bradley's amendment would strengthen FERC's position by ratifying its jurisdiction over bypass cases. This is a classic example of a false issue. The United States clearly has jurisdiction over interstate commerce; it has since the founding of the nation. Natural gas clearly is a commodity traded in interstate commerce and the FERC is the federal agency with oversight responsibility. To say that gas cannot be sold directly by a producer, marketer or pipeline to a steel or auto-making plant is ridiculous. True, the "normal" method is to first sell the gas to an LDC, which in turn sells to the plant. But there's no reason in a commodity market why the sale can't be done directly. Those favoring this option—which, by the way, rarely is executed in the most extreme sense—include producers, pipelines and end-users. Opponents include the LDCs, who obviously want to protect their fiefdoms.

The crux of the AGA argument against mandatory carriage is that the issue is complex, that it would create unknown impacts in other areas and that it is "180 degrees opposite from the voluntary open-access program FERC adopted," which, says AGA, is "working well." The first point is obvious; how well voluntary carriage is working depends on one's perspective.

But in this context, it is well to recall that FERC got into the open-access program over the pipelines' objections and at the insistence of the U.S. Court of Appeals for the District of Columbia Circuit. And, indeed, the court believes that FERC has failed to exercise its full powers to require certain actions.

In *Associated Gas Distributors v. FERC*, the court ruled on June 23, 1987, that "Several pipelines and others attack these [open-access] conditions as beyond the scope of the commission's authority under the [Natural Gas Act and Natural Gas Policy Act]. The arguments . . . rely on the proposition that the open-access condition is equivalent to a common carriage requirement, as both the condition and common carriage have at their core a duty to accept shipments from all would-be shippers." The court rejected these arguments.

The court added that "The pipelines can point to no language in the [Natural Gas Act] barring the commission from imposing common carrier status on natural gas pipelines, and certainly none barring it from imposing upon the pipelines a specific duty that happens to be a typical or even core component of such status. They seek to overcome the statutory silence by means of legislative history. The task is uphill."

The AGA argument against Bradley is thus a convoluted mixture of self-interests, cleverly worded but a poor basis for public policy. Despite this, at the bottom line the AGA is right. Bradley's simple amendment should be defeated because it has complex impacts (and because it negates the clean bill concept).

While it is not likely in this session of Congress, Bradley's proposal should be fleshed out—and in my view, strengthened even more—and resubmitted for full debate. Prior to that, of course, the clean decontrol bill should be approved.—John H. Jennrich.

AARP,

Washington, DC, June 9, 1989.

Hon. BILL BRADLEY,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR BRADLEY: On behalf of the American Association of Retired Persons, I am writing to express the Association's opposition to the Natural Gas Deregulation Bill (H.R. 1722) in its present form. This legislation would end all remaining federal regulation of gas prices at the wellhead, action which will provide clear benefit to the U.S. gas industry. However, no similar benefit will accrue to consumers, despite the loss of protections against the rising cost of energy.

With any legislation to decontrol "old gas" AARP believes that other natural gas policy issues should be addressed:

The ability of large industrial users of natural gas to "bypass" local distribution networks can result in cost shifts to residential customers, who have no choice but to pay higher prices. Action is needed to correct this inequity.

Nondiscriminatory access to gas transportation is crucial for a competitive marketplace. Today, the Federal Energy Regulatory Commission's (FERC's) open access policy, which has enabled many consumers to obtain cheaper gas, relies on voluntary compliance by pipelines. AARP supports an amendment to be offered by Senator BRADLEY which will give FERC the option of requiring the transportation of natural gas in order to ensure continued open access, even in the event of tightening gas markets.

Residential customers suffer from obligations incurred by pipeline companies in the past, such as "take-or-pay" clauses and "price escalators," which allow producers to keep charging very high prices and prevent current market forces from bringing prices down. Further deregulation of natural gas prices should include provisions to address this problem.

Energy prices remain one of the most volatile elements in the Consumer Price Index. If even modest increases are to be allowed, then added protections for consumers are essential.

Sincerely,

JOHN ROTHER,  
Director, Legislation, Research  
and Public Policy.

Mr. BRADLEY. Mr. President, as to the arguments raised, AGA has a difficult row to hoe. They have to keep all of their groups together. They have to worry about the pipelines, the producers, the local distribution companies, and this makes life a little difficult because an agreement was made—a deal was cut—that excluded the consumer. That is what this is about.

This attempt to give the consumer some pittance, some crumb, is naturally opposed by the party which was most instrumental in striking the deal.

Mr. President, the argument has also been made that somehow or another this will kill the bill. I find it difficult to believe that the Senate will not in its wisdom and in interest at least give the consumer a crumb. If the Senate passed this bill, it would go to conference, and there would be a clear signal to consumers. I doubt that this bill would be opposed. Certainly it

would not kill the bill because we are already locked into a vote on the bill immediately after this amendment is voted on by unanimous-consent agreement.

So, Mr. President, I think it would only improve the bill, and it would not harm the bill.

Again, what is my concern? The Senator from Louisiana I think correctly characterized part of it. My concern is backsliding. That is my concern. We have a good system out there working now, open-access transportation, over 90 percent of all gas now going through pipeline, and open-access bases.

If you are a producer, you cut a deal with the consumer. If you are a producer in Louisiana, you cut a deal with the consumer in New Jersey that needs the gas. You negotiate the price. The pipeline has to carry it. That is the way an open market should work, Mr. President. What am I afraid of? Well, again, let me restate how we got to open access.

We got to open access because in the mid-1980's, you had the price of oil drop. And you found a lot of customers that were taking the gas from the pipelines and saying, "Why should I pay so much for gas from a pipeline when I can switch to oil?" So they began to switch to oil, and the pipelines began to lose customers. So the pipeline says, "Well, if you are a fuel-switchable customer, you can switch to oil, as opposed to one who could not; those who could switch to oil, we will give you a special discount, but only you; not everybody, only you."

Well, the courts intervened there and said, no, that is discrimination, that is not allowed, and that is void. Then the FERC came in and said, "If you are going to provide special discounts to anybody in the pipelines, you have to provide it to everyone."

Mr. JOHNSTON. Mr. President, will the Senator yield at that point?

Mr. BRADLEY. I would like to build to this conclusion, because I am sure this will be a winning argument. If you are going to allow a few to have a discount, you have to allow everyone to have a discount. That is what the FERC said. The pipeline said, we have a decision; do we want to lose a lot of customers? Do we want to lose a lot of customers who are all switching to oil, or do we want to provide discounts to all of them? Do we want to allow them all to transport? The pipelines said, it is better to be in business at a lower price than to be out of business, and so they allowed the gas to move through.

Mr. President, that is why over 90 percent of the gas now moves through pipelines on an open access basis in this country today. What happens if the price of oil goes back up? The pipelines were not transporting open access when the price of oil was high. It was only when it dropped, and they

began to lose their customers, did they agree to transport the gas for everyone.

If the price of oil goes back up, if the natural gas market tightens, you can see all number of mischief being made. You can see petitions to the FERC for abandonment, court cases trying to get out of existing contracts. You can see a variety of possible scenarios, the result of which would mean higher prices for the consumer, unless the FERC has the authority to do what this amendment states explicitly it will have the authority to do; and that is, Mr. President, that the Federal Energy Regulatory Commission may require, by rule or order, any interstate pipeline to transport natural gas, something that one of the Commissioners, Commissioner Stalon, says they do not have.

Mr. President, that is the amendment, and that is my attempt to respond to some of the arguments made by the other side, and I hope that the Senate will do at least one thing for the consumer in this bill.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, on this question of special discounts, I have heard it mentioned here a couple of times, and I would like to be clear with the Senator from New Jersey: His amendment does not deal with special discounts, does it?

Mr. BRADLEY. My amendment is very explicitly described by the language of the amendment. The amendment does not mention special discounts in the language of the amendment. It does, however, give the FERC the authority that might be used in such a way to even out some of the potential problems with special discounts.

Mr. JOHNSTON. Now, the FERC already has that authority, do they not?

Mr. BRADLEY. Well, some Commissioners say they do, and some say they do not.

Mr. JOHNSTON. I have heard you state that Commissioner Stalon does not think they have the authority. Now, is it not a fact in the AGD decision of the District of Columbia Court of Appeals, as to which certiorari was denied by the U.S. Supreme Court, giving it the dignity of a Supreme Court decision, they have upheld that authority, the authority to grant open access.

Mr. BRADLEY. Well, if you are referring to Associated Gas Distribution versus FERC, is that the case?

Mr. JOHNSTON. Yes.

Mr. BRADLEY. I can quote from the case. It says that:

Several pipelines and others attacked these open-access conditions as beyond the scope of the Commission's authority under

the [Natural Gas Act and the Natural Gas Policy Act]. The arguments—

Meaning the pipeline arguments—

rely on the proposition that the open-access conditions, equivalent to a common carriage requirement, is that both the condition and common carriers have as their core a duty to accept shipments from all would-be shippers.

Now, the court rejected that argument, and the court went on to add:

The pipelines can point to no language in the Natural Gas Act, barring the Commission from imposing common carrier status on the natural gas pipelines, and certainly not barring it from imposing upon pipelines a specific duty that happens to be a typical core component of such status. They seek to overcome the statutory silence by means of legislative history. The task is uphill.

What I take that to mean is there is nothing in the Natural Gas Act that says that the FERC cannot do this. This amendment says that they have explicit authority to do this.

Mr. JOHNSTON. All right. Well, they have done it, and the Court has upheld their right to do it. That is fair, is it not?

Mr. BRADLEY. Yes.

Mr. JOHNSTON. Now, you talk about discriminatory or special discount rates, and you want to be sure they have the authority. Is it not a fact that section 4 of the Natural Gas Act provides explicitly that no rate may be unduly discriminatory, so that the FERC not only has the power, but indeed the duty, under the Natural Gas Act, section 4—and I will read you the language, if you would like, but they may not grant any undue preference or advantage to any person or maintain any unreasonable difference in rates, charges, services, facilities, or in any other respect, either as between local or between classes of service. So is it not true that they have all the authority they need, and indeed, they have the mandate to disapprove rates that are unduly discriminatory, which a special discount would have the potential for doing?

Mr. BRADLEY. They might have—

The PRESIDING OFFICER. I want to remind the Senator from Louisiana that his time on the amendment has expired.

Mr. JOHNSTON. I will yield myself time on the bill.

Mr. BRADLEY. They might have the authority to do so, but they do not always do so. Some would dispute the extent to which that authority flows.

Mr. JOHNSTON. Some would dispute section 4 of the Natural Gas Act.

Mr. BRADLEY. Some would dispute whether they have the authority to regulate the special discounts. But tell me where the Senator is leading so that we can—

Mr. JOHNSTON. Well, the suggestion was that somehow the FERC does not have the power to deal with spe-

cial discounts. Now, we can discuss how they are dealing with it after we discuss the question of whether they have the power to deal with it, but I would suggest to my friend that the question of whether they have the power cannot really be argued in light of section 4.

Mr. BRADLEY. Let me say to the distinguished chairman that the special discount problem, which is a problem that is already existent in a largely open-access system, is not my major concern. That is not my major concern.

Mr. JOHNSTON. It has been mentioned here a couple of times.

Mr. BRADLEY. My major concern is having the price of oil go up and having a series of petitions for abandonment and court decisions and having the problem of the pipelines essentially being able to once again prevent open access transport absent this amendment. That is my concern.

Mr. JOHNSTON. Can we agree therefore—

Mr. BRADLEY. I agree that the special discounts are theoretically a problem, but it is more theory than it is fact and probably the FERC does have the authority to deal with some of those.

This would make it easier for them because it would make it explicit, but I do not know that many people have challenged their authority to deal with special discounts.

Mr. JOHNSTON. Then am I hearing from my friend from New Jersey that FERC does have the authority to deal with special discounts and that this amendment really adds nothing to authority which already exists? Is that fair?

Mr. BRADLEY. I would say that it adds a dimension to the authority. It adds a dimension. It has the authority but it adds a little more emphasis and gives them a little more explicit clout. What could I say to the Senator. That is how I read the amendment.

Mr. JOHNSTON. I think the answer to my question was yes on question of special discounts and I am prepared to argue that sometimes special discounts are in the interest of the consumer because a discount is the correct choice where an industrial customer has the right to switch to oil and get off the pipeline or be granted a special discount within a very narrow band of minimum and maximum discounts which have been approved by FERC.

FERC has also had rules saying you cannot cross-subsidize discounts, and they have a maximum and a minimum band for granting discounts, and I submit to the Senator that it is definitely in the interest of the consumer for them to be able to do so to keep a load from going off the line altogether, because if they go off the line altogether and switch to fuel oil, which about 30 percent or more of the loads

are now dual fuel capable, then it is definitely not in the interest of consumers.

Mr. BRADLEY. Mr. President, will the Senator yield for a question just to get his own interpretation?

Mr. JOHNSTON. Yes.

Mr. BRADLEY. Is it possible under the present system that if you were a pipeline you could offer a better rate to a customer if that customer bought the gas from your own market affiliate?

Mr. JOHNSTON. Would the Senator repeat the question, please?

Mr. BRADLEY. If you are a pipeline could you offer a better rate? Could you choose to offer a better rate to a customer if that customer bought the gas from the pipeline's market affiliate?

Mr. JOHNSTON. FERC has promulgated a specific rule on marketing affiliates and very carefully polices that. Without getting into the intricacies of that rule, because it is a very intricate relationship on affiliates and how they are defined and the extent to which you are able to deal with those, suffice it to say that this is not a question of power of FERC.

FERC considers themselves to have power. That power is in fact exercised.

This amendment neither adds nor detracts from that power, and I think the Senator will agree that that is fair.

I think we could move on from the question of special discounts and affiliates, am I correct, to the more central question?

Mr. BRADLEY. The Senator is the chairman. He may move in any direction he chooses.

Mr. JOHNSTON. Very well.

I think the Senator in his fairness would agree with me that those questions were at best subsidiary and frankly I think have been answered by the plain language of the act.

When the Senator says "backsliding," his amendment is an antibacksliding amendment, is that fair?

Mr. BRADLEY. Yes.

Mr. JOHNSTON. All right. The question is, Who would backslide? Who are we concerned about? Are we concerned about the pipelines backsliding and changing their mind, or are we concerned about FERC backsliding and changing its mind?

Mr. BRADLEY. The Senator's argument against the amendment, as I heard a part of the argument, was the uncertainty that might be created by this, the uncertainty.

Mr. JOHNSTON. Yes.

Mr. BRADLEY. To the contrary, this amendment reduces uncertainty.

Mr. JOHNSTON. I know. But about whom are we concerned in backsliding?

Mr. BRADLEY. You cannot devise every possible scenario that might exist in the future for every possible circumstance.

Mr. JOHNSTON. Let me ask you the more specific—

Mr. BRADLEY. I can imagine.

I can certainly imagine circumstances where there could be a petition to FERC, where there could be a court action, where there could be some court in some part of the United States make a ruling.

I could see a variety of possibilities, all of which would negate the progress that we have made in the last several years, and the precipitating event for those would be pipelines essentially wanting to get back to a situation where they did not have to transport gas from a willing producer and a willing consumer.

Mr. JOHNSTON. Let us deal with the question of pipeline backsliding. Would the Senator agree with me that all 23 major pipelines, 100 percent of the major pipelines and close to 100 percent of interstate pipeline capacity have subjected themselves now to FERC jurisdiction, 20 of them have already been granted certificates and the other three certificates are pending and surely will be granted, that will be close to 100 percent of load, that they many not backslide, change their mind without the permission of FERC in the form of an abandonment certificate?

Mr. BRADLEY. Or they might go to court and litigate it. FERC is one route and the court is another route. Yes.

Mr. JOHNSTON. And the power of FERC has been upheld through the D.C. circuit to the Supreme Court by certiorari denied?

Mr. BRADLEY. Yes.

Mr. JOHNSTON. So you say they could go to court, but the issue has already been settled in court. The Supreme Court could change its mind, the Congress can change, anybody can change its mind.

Mr. BRADLEY. But, no—

Mr. JOHNSTON. But right now, it is very clear the authority is upheld all the way to the Supreme Court, is it not?

Mr. BRADLEY. The interesting thing is that in some of these open access agreements, abandonments are already contemplated. Abandonments are already granted as a part of the open access agreement.

In orders 451 and 490, for example, FERC authorized abandonment ahead of time for producers facing an intransigent pipeline.

Mr. JOHNSTON. That is not an abandonment of the certificate of open access. That is an abandonment on a particular sale so that they can go to spot market and have more flexibility. But that is not a change from an open access carrier to a closed carrier. That is simply to grant more flexibility in going to the spot market.

Are we agreed on that?

Mr. BRADLEY. The normal route that pipelines would take would be to FERC seeking abandonment, seeking an abandonment certificate, although they have the court route also and they might choose the court route if they thought they could get abandonment quicker.

Mr. JOHNSTON. I think we have settled, at least I think so, that a pipeline cannot change its mind and go to open access without the authority of FERC. FERC might grant an abandonment, but they cannot do it on their own, so that backsliding by pipelines is not a problem.

Now backsliding by FERC could be a problem. FERC could change its mind, I suppose.

But I want to ask the Senator in his amendment which reads as follows, "The Federal Energy Regulatory Commission may require, by rule or order, open access," the word "may" is surely discretionary and does not prevent the FERC from backsliding, does it?

Mr. BRADLEY. It allows the FERC to make a judgment as to whether it should require interstate pipelines to transport gas. It is a discretion that they have. It is not a mandate. It is not a requirement that they do. It is a discretion, and the Senator has argued, as he has, that this is something they already have. There should be no problem with simply stating it again.

But I think it is precisely because there is an ambiguity and the Senator wants to allow for the possibility in the future that there could be some abandonments and that FERC does not have the full authority. Then he opposes the amendment.

Mr. JOHNSTON. I would be prepared to make the argument—and I would like the Senator's comments on this—that the change from order 436 which allows for open access carriers, that a change from that under present law would not automatically be granted but might be subject to disapproval by the courts on the present law on the ground that it violated AGD which upheld open access carriage.

In other words, under the present law, it would not automatically be true, I think, that the FERC could abandon its open access rule. Under the Senator's amendment, however, it becomes clear the right of FERC to change its mind because by saying that it may require, it is also saying that it may change its mind.

So would the Senator agree that this amendment might even grant the power not to order open access, which power may not exist under the present law?

Mr. BRADLEY. Before I answer that question, may I ask the Senator a question of his own view. Does the Senator view the present regulatory arrangement as being such that under

no circumstance can there be backsliding?

Mr. JOHNSTON. Backsliding is a value judgment.

Mr. BRADLEY. Does the Senator believe that, under the present regulatory arrangement, there can be no abandonments?

Mr. JOHNSTON. By abandonment, do you mean abandonment as to sales or abandonment as to open access?

Mr. BRADLEY. Open access.

Mr. JOHNSTON. I think as a practical matter there can be no turning back from open access.

Mr. BRADLEY. But no abandonment? Under the present regulatory rules, the Senator's view is that there can be no abandonment? Is that what he is asserting; no abandonment? I am an open access pipeline. I want to get out. I petition the FERC and the FERC cannot say I can abandon my customer?

Mr. JOHNSTON. There can be no abandonment without a certificate of abandonment. A certificate of abandonment may be granted by FERC only in a contested proceeding in which the rights of all parties are heard and which would be governed by section 7 of the Natural Gas Act and by the principles of order No. 436 which grants open access. So that you would, in order to get that certificate of abandonment, you would have to show that the open access is not needed. I cannot imagine the finding of public convenience and necessity which would be made pursuant to order 436, which is the governing rule here, I cannot imagine how a whole pipeline could abandon its authority. That, in turn, is subject to court review.

They could, I suppose, abandon particular sales. In fact, they have given authority to go to the spot market to give flexibility so that you can have an open market. But that is different from an abandonment of total sales authority.

Really what we have here is the FERC—and I really admire the FERC for the direction in which it has moved. In the mid-1980's, in fact 1985, they went from the whole structure of pipelines as merchants sales—where the pipelines would purchase the gas, in effect, from producers and sell it to the local distribution companies—to a new system of open access. And it was a very complicated procedure.

They came up with order 436, which authorized these open access carriers. But that, in turn, created problems under take-or-pay, because the pipelines were told that they did not have the right, in effect, to require the local distribution companies to buy this contract gas, so rights were taken away from them in order 436, but they did not have any compensating relief of obligations from the take-or-pay obligations.

So, the court of appeals upheld the Federal Energy Regulatory Commission's right to order open access, but remanded, saying that you must also deal with take-or-pay. Then they came up with order 500 to deal with that question of take-or-pay, the two being interrelated.

There is really no turning back, and there should be no turning back from open access.

Let me just say one more thing—and I want to preserve some time on the bill because I see the Senator from Oklahoma here, who has been a leader in deregulation this year and in previous years, and I want to give him time to speak.

But I think there is not only sufficient authority under the law, there is no turning back under the present law. One thing is clear: under the amendment of the Senator from New Jersey, it is discretionary power anyway. There could be abandonments, there could be backsliding, to use his word, under his amendment.

Mr. BRADLEY. This does not say anything about abandonment. It does not say anything about backsliding. It says the authority to mandate transportation is—it says "may." It does not say "must." Would the Senator feel more secure, given his strong support for open access, if it said "must"?

Mr. JOHNSTON. I would simply say that it is the Senator's amendment. And if you want to know does it say anything about backsliding, it does. Backsliding is spelled m-a-y, may. That means the right to backslide because it means discretionary.

Mr. President, how much time is left on my side on the bill?

The PRESIDING OFFICER. Twenty-two minutes and 52 seconds.

Mr. JOHNSTON. Mr. President, I see the Senator from Oklahoma. Does the Senator from Oklahoma wish to speak?

Mr. NICKLES. Yes.

Mr. JOHNSTON. How much time does the Senator wish?

Mr. NICKLES. Maybe 7 or 8 minutes.

Mr. JOHNSTON. Mr. President, I yield 7 minutes to the Senator from Oklahoma.

Mr. NICKLES. Mr. President, I rise today in support of the bill to, at long last, decontrol natural gas prices. I say "at long last," because this has been a battle that has been fought on the Senate floor for 35 years. It goes all the way back to 1954. Ever since that time, the Federal Government has regulated—and I will say misregulated—the price of natural gas.

Mr. President, natural gas is the only major commodity on which the Federal Government still imposes price controls. At various times since 1954, Congress and even a former President have compounded the price

control mistake of 1954. In the early seventies you might remember President Nixon imposed price controls on a variety of goods and services, including oil, beef, and a multitude of other items. Incidentally, he imposed these price controls because inflation was getting too high. It was at 7 or 8 percent.

Price controls did not work then. It was a mistake. Bill Simon, who administered part of that program, readily admits that it was a mistake. Most all economists admit it was a mistake. Most all economists will also tell you that the imposition of price controls on natural gas since 1954 has been a mistake. It has not saved consumers a dime. In fact, over the last decade, price controls on natural gas have cost consumers billions of dollars more than they would have paid had not Congress passed additional price control legislation in 1978. It has distorted the marketplace.

Congress has tried to fix the bad policy of regulating natural gas prices. Actually, Congress did pass a decontrol bill during the Eisenhower administration, but President Eisenhower vetoed it because of some inappropriate ethics by some lobbyists. Other attempts have been made in Congress after Congress to repeal price controls but they were unsuccessful. This is my ninth year in the Senate, and in every Congress I have advocated legislation to decontrol natural gas prices.

We thought we were pretty close a few years ago. We had 31 days of markup in the Energy Committee, probably the most contentious and complex effort that this Senator has been involved with. We tried to pass a bill. We finally passed it through committee. However, we did not get it through the Senate floor or the House floor. So we were unsuccessful.

I believe today will be a historic day, a positive day, because this year we will finally, at long last, be successful in decontrolling natural gas prices. We will be successful in finally correcting the natural gas price control mistake.

The mistake of 1954 was compounded by Congress, when it passed the Natural Gas Policy Act of 1978. At that time, a lot of people said, "Hey, we have done some good things." And the Congress made some improvements in the act. They at least provided for partial decontrol in 1985 and 1987. But they really made some big mistakes in 1978 in the Natural Gas Policy Act. They kept prices in virtually all interstate gas and extended gas price controls on the intrastate market. Those were serious mistakes.

In 1978 we did not have shortages in the intrastate markets. We had shortages on the interstate markets, where we had price controls. Congress made one mistake in 1978 in extending price controls to the intrastate markets. They made another mistake when

they came up with 33 different price categories for natural gas.

That, too, was a serious mistake. We had price categories that ranged from 20 cents all the way up to an unlimited amount, confining the uncontrolled price to only one category, and that caused lots of problems as well.

We can eliminate those problems by doing what should have been done in 1978, really what should have been done in 1954, by at long last eliminating price controls on this commodity, natural gas.

Natural gas is natural gas. It does not make any difference if it is deep or if it is in tight sands or if it is shallow or if it is old or if it is new. It is natural gas. We should allow the marketplace to determine the price of natural gas, not Members of the Senate, not Members of Congress, not staff of the bureaucracy, not the Commissioners at FERC.

Mr. President, by repealing price controls on natural gas, by repealing the pricing mistakes that remain in the Natural Gas Policy Act, we will be accomplishing what I would say is the undoing of some of the mistakes of the Carter administration.

The Carter administration wanted to come up with an energy program so they passed the Natural Gas Policy Act, which I mentioned had several shortcomings. They also passed the windfall profit tax, which raised \$79 billion from a handful of States. We finally have repealed that in the last Congress.

They also passed the Fuel Use Act, that said we could not burn natural gas in major industrial plants and utilities. We virtually repealed that last year as well.

The Carter administration also proposed the Emergency Standby Allocation Act, which had an elaborate allocation scheme for oil and oil products. It was vetoed by President Reagan and we sustained that veto. The Carter administration also passed the Synfuels Corporation, which spent billions of dollars on Federal projects, almost all of which were uneconomical and really did not make any sense. I happen to be a supporter of Synfuels development, but I want it to be done in the private sector, not with Federal corporations.

So, really, by passage of this natural gas decontrol bill, we will finally, at long last, be undoing most of the damage that the Carter administration imposed on us in the late 1970's and 1980.

I think that is good news. I think it is positive news. I think it is good news for consumers. It is good news for the industry. We are saying we will be allowing the marketplace to function and the marketplace can function much, much better than either Members in this body or Federal bureaucrats.

I think it is good news for all concerned. I think you will see an adequate supply of natural gas at the best possible prices to consumers by passage of this bill. I urge its adoption. I am confident we can swiftly work out the one area of disagreement with the House, the "newly spudded wells" provision, which has been rejected by the Senate and which I believe is a bad provision.

I urge the passage of the bill and I yield the floor.

The PRESIDING OFFICER (Mr. ROBB). The Chair recognizes the Senator from New Jersey.

Mr. BRADLEY. How much time do I have, Mr. President?

The PRESIDING OFFICER. The Senator has 3 minutes.

Mr. BRADLEY. Mr. President, let me just summarize the amendment quickly. In the natural gas market today, over 70 percent of all gas is transported under open access agreements that are struck between willing producers and customers. The pipeline must carry the gas. That will no longer be the case if the oil price goes up or the gas market gets tight.

If the oil price goes up or the gas market gets tight we will then find abandonments and we will find higher prices for the consumer. The most important consumer initiative in natural gas policy in the last decade has been open access transportation. That should be a part of this bill. If it is not a part of this bill we will find pipelines raising prices to consumers in the next 4 to 5 years.

My witness for this is none other than Exxon, before the Canadian Energy Board, who said explicitly that in the next 4 to 5 years the expectation is "that customers will no longer have access to spot market gas. They will again be relying on pipeline suppliers. Meaning us. And when they have to rely on us as opposed to going to the spot market, the prices will go up."

Mr. President, let us do something for the consumer in this bill and let us pass this amendment to preserve open access transportation.

I yield back the remainder of my time.

The PRESIDING OFFICER. All time having expired on the Bradley amendment, the procedure, under the previous order, will be that the Bradley amendment will be delayed until the remaining debate on the bill has been completed.

There will now be 1½ hours of debate equally divided between the Senator from Louisiana and the Senator from Ohio, minus the short period time that has already been taken from the Senator from Louisiana on the bill itself on the Bradley amendment.

Mr. JOHNSTON. Mr. President, I understood the vote would take place

at 12 noon. Debate started at 9:30 and we had an hour on the amendment and 1½ hours on the bill.

Does that still mean the vote will take place at 12 noon?

The PRESIDING OFFICER. The vote will take place when all debate on the bill has expired. The Senator has, I believe, 16 minutes left and the Senator from Ohio has about 45 minutes remaining on the bill.

Mr. JOHNSTON. Sixteen and 45. So if all the time is used, that would be about 12:07 or 12:08; am I correct in that?

The PRESIDING OFFICER. The Senator is correct.

Mr. ADAMS. Mr. President, I would like to address a question to the Senator of New Jersey on the impact of his amendment. Specifically, I am concerned about the problem of the bypass of local utilities by gas pipelines—and the implications of this amendment. I wonder if Senator BRADLEY can clarify how his amendment will affect the issue of bypass?

Mr. BRADLEY. Mr. President, the Senator from Washington has raised a crucial point, and my answer is simple: This amendment is intended in no way to affect the ongoing debate over bypass. The amendment does not allude to bypass and is not intended to influence or alter in any way the Commission's or the courts' actions on the issues surrounding bypass. This amendment is solely intended to help all the buyers of natural gas, both the utilities and industrial customers, who have come to take advantage of opportunities of gas transportation.

The Senator may have seen a letter addressed to me that was circulated by the American Gas Association and which raised this issue. I doubt, however, that my colleagues have seen an editorial in Monday's Natural Gas Week where, even in this proindustry publication, the AGA objection was dismissed as "a canard." Mr. President, it is a fact that my amendment is supported by some of the strongest advocates of antibypass legislation. It is likewise a fact that the AGA has taken no formal position either in favor or against bypass. The issue of bypass is a significant one, but has no relevance to my amendment or this debate.

Mr. ADAMS. I thank the Senator for his very clear statement.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, there is a matter of great national concern that I believe the Senator from Michigan would like to address himself to. It does not have to do with the gas deregulation bill, but because it is of such national concern and such a source of pride to him, I yield to the Senator for 3 minutes.

The PRESIDING OFFICER. The Senator from Michigan is yielded 3 minutes.

#### WORLD CHAMPION DETROIT PISTONS

Mr. RIEGLE. Mr. President, I rise just to acknowledge the terrific performance of the Detroit Pistons in the playoffs during this year. We have never had a national basketball championship come to our home State of Michigan and Detroit, and this is the first time. Of course, this is very well earned over a long stretch of time.

I take this minute to say something about it because in watching the development of that team and its character over the years, the owner Bill Davidson, the coach Chuck Daly, all the players, Joe Dumars, Dennis Rodman, and all the rest of them, I think represents—and sometimes sports do this—some important things about what can be accomplished with teamwork and with hard work.

Everybody I guess in professional sports these days who reaches this kind of a pinnacle experience has to play hurt to a certain degree. We saw that in some great players like Earvin Johnson not even able to play in the series. We regret that. He of course also comes from Michigan. But in any case, I think the fortitude, the courage, the achievement that we see by that team not only is a tribute to them but it says something about what teamwork can accomplish when people work together.

I think there is an important lesson in that for America today. We have major trade problems in the global economy, and I think we need a team America approach. If we could learn to do some things in our national economic system with the same kind of cooperation and selflessness that we saw shared as a team among all the players on the Pistons, it would be a very useful lesson for us.

#### TOMMY HEARNS

Mr. RIEGLE. Mr. President, I also want to take a minute to acknowledge another important Michigan sports figure, Tommy Hearn, who was involved in a major boxing match with Sugar Ray Leonard on Monday last. The heroic job that he did, coming back from a very difficult defeat some 8 years ago, with the mental discipline and the character and strength to come in and prepare himself for that

kind of an epic contest, is a great tribute to him. While boxing is seen by many as a very brutal sport, and certainly it is, I think for those who elect to take part in it, the preparation and the discipline it takes to achieve a goal of that kind is extraordinary in the extreme. I am very proud of Tommy Hearn, and I know everybody in Michigan and around the Nation who follows athletics feels the same way.

So my hat is off to the Pistons; it is off to Tommy Hearn. They set examples that are useful for us in other parts of our national life.

I thank the Chair and I thank my colleague from Ohio.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### NATURAL GAS WELLHEAD DECONTROL ACT

The Senate continued with the consideration of the bill.

Mr. JOHNSTON. Mr. President, I yield myself such time as I require, not beyond 10 minutes.

The PRESIDING OFFICER. The Senator has the floor.

Mr. JOHNSTON. Mr. President, at 12 noon, or thereabouts, we will vote first on the Bradley amendment, which we have fully discussed, and to which we have pointed out to our colleagues that the amendment would be very mischievous, would sow uncertainty in gas markets, would produce opposition from local distribution companies, which believe that an amendment would authorize what we call bypass, which, in effect, allow the pipelines and industrial loads to scrape the cream off the gas market by making direct deals with producers of natural gas and transporting gas directly to the industrials, thereby upping the prices for consumers.

Now, Mr. President, if this result is not clear, then it is at least possible and is the basis upon which the American Gas Association, the Natural Gas Supply Association, the pipelines, everybody in the consensus group behind the bill, opposes the Bradley amendment.

The Bradley amendment is not necessary, Mr. President. It fixes a problem which does not exist, because at present, 100 percent of the major pipelines have applied for what we call open access carriage. Twenty of the twenty-three pipelines are presently operating under that authority, and may not get out of that requirement,

without the permission of the FERC. The final three pipelines which have applied, and which have not now been given a certificate of open access, soon will have that certificate of open access, so that open access—that is the requirement of pipelines to carry anyone's gas—is presently the law of the land; and to the extent we pass the Bradley amendment, it would simply sow uncertainty, litigation, and provoke political opposition to this bill, because of what it might do with respect to what we call the bypass issue.

Mr. President, 35 years ago the Supreme Court, in a decision, came up with a scheme of regulation for natural gas. Natural gas regulation for 35 years has produced shortages; it has produced dislocations; it has produced in the cold winter of 1975-76 unemployment by the hundreds of thousands. This country, in the midst of a lot of natural gas supply in the ground, produced shortages by a system of regulation. And in the process the consumer, by regulation, got higher prices rather than low prices, which the system of regulation was meant to produce.

So this regulation continued, Mr. President, until 1978, when the Congress, both liberals and conservatives, both consumers and producers, recognized that the system had to be changed. And we came up with the Natural Gas Policy Act, which deregulated large blocks of gas to have increasing prices and to have increasing prices and to be deregulated in the future, and which kept other species of gas under regulation.

Mr. President, we said at the time that that Natural Gas Policy Act would produce more supply, and it did produce more supply. We said the consumer would be protected by that, and we were correct. On the average, the Natural Gas Policy Act of 1978 has produced lower prices.

The Natural Gas Policy Act also provided that on January 1, 1985, the other large block of gas was to be deregulated. It was a moment in time, Mr. President, which was described by opponents of deregulation as calling for a fly up in natural gas prices. It was predicted that it would be an Armageddon for consumers. We, Mr. President, who had always opposed natural gas regulation, said no such thing, that deregulation on January 1, 1985, of these large blocks of gas, would not cause the consumer increased prices. As a matter of fact, Mr. President, we were correct. The deregulation which took place on January 1, 1985, produced lower prices. The market resulted in a 36-percent decrease in prices between January 1, 1985, and the present time. Deregulation works, Mr. President.

There continues to be regulation of natural gas at the wellhead, however, under the Natural Gas Act and the

Natural Gas Policy Act. Those regulations deal with only a small amount of the gas. However, they continue to result in delay and expense. They produce a lot of legal fees. I used to practice law, Mr. President, and my father used to always say, "Son, the safety of the Republic lies in a well-paid bar." He would say that with a smile after collecting a particularly big fee.

Mr. President, the safety of this republic does not require the continued delay and large legal fees which this regulatory scheme requires. That is all we get out of the remains of regulation which we have right now. What we need to do, Mr. President, is get rid of that regulation. It will not produce higher prices for the consumer. Some prices will go down, some will go up, but, as the Washington Post said today, those prices on the average will not be raised. As they say, "Abolishing controls on production at the wellhead is going to have no effect on the final prices that users pay."

Mr. President, in my State and other producing States, this bill will have a very good effect. There will be more drilling, as the Natural Gas Supply Association and the American Gas Association said. There will be more drilling, more infield drilling, more jobs, more will be produced in the natural gas industry. Mr. President, one of the most important effects in producing States will be that old wells will be reworked.

The Natural Gas Supply Association says that as much as 20 trillion cubic feet of additional gas can be produced under this bill by allowing the reworking of old fields. That is greater than 10 percent of the total Nation's proven reserves of natural gas; if the Natural Gas Supply Association is correct, that can be produced by this bill.

Mr. President, I hope they are right. I believe this bill is going to pass. Ten percent additional incremental supply of natural gas is a goal greatly to be desired by people in this country, and particularly by those of us in States that have been devastated by lack of jobs in the oil and gas industry. This bill offers real hope, not just to the consumer—and it does offer hope to the consumer—not just to the producer, and it offers a lot of hope to him, but particularly to those devastated producing States who have had high unemployment, it will produce employment. It will produce natural gas, and it will do so at a good price for consumers.

Mr. McCURE. Mr. President, will the Senator yield me 4 minutes?

Mr. JOHNSTON. Mr. President, I yield the Senator from Idaho 4 minutes.

The PRESIDING OFFICER. The Senator from Idaho [Mr. McCURE] is recognized for 4 minutes.

Mr. McCURE. Mr. President, this is a day that I have long awaited, the opportunity for us to bring about the decontrol of the last vestige of Federal price controls on an essential energy commodity.

I hope people will recognize that after many years of Federal regulation of natural gas prices, we produced a shortage. This is not simply an academic exercise, although academicians have argued about the effects of price controls for ages. This is a concrete example of what happens under controls, and that is that production is dampened, the consumers benefit in the short run and pay a higher price in the long run, as they produce shortages, lack of supply.

We demonstrated as we went through this process that the partial deregulation that was achieved by NGPA will break that cycle, will bring about greater production, but it also ended up in higher prices than the consumers ought to have to pay.

This is not theory; this is fact. We can demonstrate it by past history: too much regulations brought about, first of all, shortage of supply and, second, prices that were too high.

The consumer will benefit by the deregulation of the remainder of the natural gas supply.

The second point I wish to make is that indeed this does not interfere with State prerogatives to regulate local distribution companies in whatever way the State decides they wish to do. It preserves the State regulatory process. It dismantles the Federal price regulatory process.

And the final point for those who are wondering as they come to the floor to vote what will they be voting on, they will first vote on the Bradley amendment which must be defeated if you hope that this bill will accomplish what we believe it can accomplish. The Bradley amendment is unnecessary, unneeded; it ought to be defeated rather than to allow it to destroy the opportunity to bring about a deregulated market at the Federal level with respect to natural gas.

So I hope on the first vote Members will vote against the Bradley amendment and then join the rest of us in taking the step that has been long awaited by many of us and that is the dismantling of the Federal price regulation of natural gas in this country.

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, we are not in a quorum call, is that correct?

The PRESIDING OFFICER. That is correct.

Mr. METZENBAUM. Mr. President, will the Chair be good enough to advise with respect to the time?

The PRESIDING OFFICER. The Senator from Ohio has 14 minutes and 52 seconds remaining; the proponents of the bill and opponents to the Bradley amendment have 53 seconds remaining.

Mr. METZENBAUM. Mr. President, there is no doubt that the Senate will shortly vote to end 35 years of regulation of natural gas prices. The final margin of victory is the only outstanding question.

For those of my colleagues who are now making up their minds, I urge you to vote "no." I urge you to vote "no" because I am certain as I stand here that passage of this bill will come back to haunt you. Passage of this bill will be an issue in the winter of 1989, it will be an issue in the winter of 1990, because all reliable sources indicate that natural gas prices are going to rise. There is only one question. How much will they go up?

I know of no source, no reliable source, nobody who has said that natural gas prices are going to come down.

Passage of the bill has nothing to do with reducing paperwork. Let us not kid each other. Passage of this bill has to do with dollars, how many millions and maybe billions of dollars are going to be placed in the hands of the producers, the pipelines, and, yes, maybe even the local distribution companies as well, but not to the same extent. The main beneficiaries are going to be the producers and the pipelines.

The argument is made that when the Natural Gas Pricing Act was passed in 1978 it was predicted that prices would go up and they did not, and I am not prepared to dispute that fact, but something happened. Something happened; oil prices were on their way up, and suddenly oil prices went way down. The OPEC oil ministers thought that they could control the production and thereby control the prices of oil. There is no question about it: oil prices relate to gas prices.

The OPEC ministers were unable to do this. The OPEC nations failed in that effort. And so you had plenty of oil coming into the market and prices tumbled very rapidly.

There is a reality in the world in which we live with respect to fuel sources. If you can buy oil cheaper on a per Btu unit than you can buy gas, you are going to buy oil. So when oil prices came down, gas prices also came down. It was not that there was that much new gas, that is a fallacy. That is not correct. It was that the competitive market just was not there to push prices up.

Proponents would argue that this is a minor piece of legislation, that this legislation really has nothing to do with prices, that this just has to do with getting the yoke off the back with respect to regulation. They would claim that it has more to do with K

Street lawyer fees than with Main Street heating bills.

The fact is, sure, lawyers make fees, but we are not talking about legal fees here; we are talking about gas prices.

I do not care what State you come from. I put in the RECORD the other day the number of households using natural gas in every State of the Union. There are a couple that do not use much. But across the board you will find that people in State after State after State heat with natural gas. Those are the people who are going to pay the bill, consumers, and, yes, the industry as well because those industries that use natural gas will also be paying the bill and they will pass those costs on to the consumers.

There will not be more jobs as a consequence of this bill. There is nothing in this bill that has to do with jobs, as a matter of fact. I would like to think it would have more jobs. If it would I would probably consider voting for it. But there is nothing in this bill having to do with more jobs.

I will tell you. This bill does not have to do with lawyers and technical provisions. That is not what is up here.

I will tell you what is up here. Gas prices are going up. A vote for this bill means that you will be able to look backward and say "I helped gas prices go up" and you are going to be able to say proudly "I helped the oil companies of this country," because the 10 largest oil companies in this country control 45 percent of the total natural gas reserves of this country.

The oil companies and the gas producers want to ride that rocket as high as it will take them.

Under our current system of controls, we have a supply of old, cheap gas. That old, cheap gas is now selling below a dollar which helps protect consumers from higher heating bills. It sells for below a dollar notwithstanding the fact that the market price of natural gas is somewhere between \$1.35 and \$1.65 at most.

When the price controls are taken off that old gas is going to cost consumers more.

Under this bill there is no cushion, no protection, no solace for consumers. Under this bill, all of the old gas reserves that the oil companies have been buying up and holding on to will be decontrolled. As a matter of fact, at the present time, almost 40 percent of the flowing gas is still controlled.

It is a fact that only 6 percent of that gas is under the market price. But when prices go up and there are no controls, then, as to that other 34 percent, the controls will be taken off that as well, and this bill will provide a windfall profit of untold and unknown proportions.

I can say to my colleagues that I would not be the least bit surprised to see oil company stock prices in the

marketplace go up promptly upon the President's signing of this bill or the Senate passing it.

Mr. President, I made my case on this bill. We have had a long and spirited debate. I know that I am not going to prevail. We have argued long and hard, and I congratulate the managers of the bill on their victory.

But I think it will be a hollow victory, because it is no victory for consumers.

My colleague from Louisiana says this bill offers real hope to the consumers. I say to him, the consumers of this country are going to be hurt and this bill is the one that is going to hurt them. Deregulation is no bargain for average Americans.

My colleague points out that the Washington Post today says that "Passing this bill will return the last corner of the economy to the kind of market pricing that serves the country best." Well, there is one problem with that point of view and that is that that point of view with respect to decontrol and market pricing does not always work so well.

I was here when we all joined in deregulating the airline industry. Ask the American people whether they think deregulation has worked well in that respect. There is little competition out there in the airline industry today and there are higher prices across the board.

Ask the American people about telephone deregulation. Ask them if they think that worked so well. I was for it, but it was a mistake in retrospect.

Ask them about the deregulation of the savings and loan industry. What a wonderful thing that was. Let the free market work. That was the Reagan administration policy. It is going to cost us about \$239 billion for that little error and I am now told that it may go up to \$300 billion.

The American people will tell you in passing this bill, "Thanks, but no thanks." Frankly, I think the American people are going to wake up and suddenly find what has occurred on the floor of the U.S. Senate and the House of Representatives. They do not know what is going on at this moment about this legislation. It is a low-profile issue. But when the prices go up and heating bills go up and producer profits go up, they are going to look back and say, "How did this all happen to us? Where were the Members of the Congress when they should have been standing up fighting for our concerns?"

I urge my colleagues to resist the shortsighted view. I urge you to look to the long term. Do not cancel consumers last remaining piece of insurance against rising energy prices.

Passage of this bill will be hurtful to the economy. Passage of this bill will

be inflationary. Passage of this bill will be counterproductive.

I think it is going to pass. As I have already said, I congratulate those who are handling the measure, but I cannot congratulate the consumers of this country. They are going to pay the bill. They are going to pay the price. Those Senators who see fit to vote for decontrol are going to be called upon by their constituents who will say, "Why did you do that to us?"

Mrs. KASSEBAUM. Mr. President, in recent years the Senate has addressed a variety of deregulation issues. We have struggled through deregulation of the aviation industry, we have struggled through deregulation of the savings and loan industry, and we have struggled through deregulation of the interstate busing industry. As to whether all this deregulation has been beneficial, I think the verdict is still out.

Kansas is currently facing the prospect of losing important interstate bus service. This would pose a significant hardship on many rural communities. The same can be said of rural air service. These examples indicate the importance of not taking deregulation lightly.

Industries are regulated to protect captive customers from capricious actions by dominant suppliers. Suppliers have every incentive to raise prices for captive customers and to discount prices to noncaptive customers. Such as incentive is always part of a deregulated and competitive market. Captive railroad shippers face this problem, as do captive cable television viewers.

Kansas has a large supply of natural gas. Kansas also has a large number of residential consumers of natural gas. Many are elderly living on fixed incomes. They use the gas to heat their homes in the winter and to cook their daily meals. Natural gas is a basic necessity, and these consumers are truly captive. If natural gas prices go up, they must somehow pay the increase.

Given the fact that the industry is in the midst of substantial change, I think we should either address deregulation in a comprehensive manner or we should not act at all. Attempting to deregulate an industry undergoing such a transformation will almost assuredly lead to unintended and unforeseeable consequences. Past statistics on which this legislation is based may very well be meaningless in the vastly changed natural gas industry of tomorrow.

If we really want to deregulate the market, we must have the courage to face the take-or-pay issue, and we must have the courage to face the bypass issue. Addressing half the issues only sanctions marketplace distortions. Many natural gas contracts were drafted years ago on the assumption the market would continue to be regulated. As long as those contracts

are in effect, we can be assured of continued market distortions. I have no doubt as to the fact that it will be the captive residential consumers who are most affected by such distortions.

Although I am not afraid of change, I see no need to act simply to be acting. I am skeptical that the projected benefits of this bill will ever be achieved, and I think it is quite possible its consequences will be unintended and undesirable. Like the section 89 outcry or the savings and loan fiasco, the ramifications and public awareness of this bill may not be evident until several years after it has been passed. By then, the time for an appropriate congressional response will have lapsed. Given the fact that the industry is now in a state of significant change and the future of gas prices is uncertain, I do not believe now is the time to enact this bill. Accordingly, I will not support it.

Mr. DOMENICI. Mr. President, there are many things that happen on the floor of the Senate which could be said to be historic. For those Members who have been here long enough to be involved in the issue of price regulation of natural gas, this is a historic occasion. The first bill I cosponsored in this body was on that subject. Months of the 95th Congress were spent in closed-door negotiations and in battles on the floor over this issue. Months of our time in 1982 and 1983 were spent battling over this issue. Yet, today we are considering a bill which, except for one major difference, passed the House by unanimous consent.

There will be amendments offered to this bill which are controversial. I do not know if any will be accepted. This is a bill which deregulated the prices for natural gas in a way some of us argued was appropriate in 1983. It does little harm to existing contracts. It does not set up huge regulatory schemes to "phase out" or "phase down" prices of different categories of natural gas. It simply will eliminate all remaining Federal controls on wellhead sales of natural gas and would do so effective January 1, 1993. In some cases, wellhead controls would be deregulated even sooner.

Only a small percentage of natural gas remains regulated—about 6 percent of that produced domestically. The ceiling prices of this small amount are constrained at below the market prices. I believe that wellhead decontrol will help to ensure that demand in this country is met by adequate, new supplies of gas that might otherwise not have been drilled while under Federal control.

Let me speak for a moment about the major difference between this bill and the House-passed version that I spoke of earlier. It is commonly referred to as the "newly spudded issue." What the House proposed was

that for any well started after March 23, 1989, it would not receive the price under which the well would have normally brought under an existing contract. Clearly, the advocates of this provision hoped that, where producers had managed to negotiate or be entitled to a higher incentive price, they would lose it. They would lose it in spite of the fact that they had a valid contract for it. Now this is the very issue over which this legislation died in 1983. The sanctity of contracts was at stake. The House has said they want to force producers to lower their prices on all wells drilled after March 23, 1989, even though they have a right to a higher price. I am glad the Senate disagrees.

Now, Mr. President, I do not know why this provision passed the House without comment. I do not know how those who opposed the legislation in 1983 could support this provision. My State of New Mexico is bound to be affected adversely by the House provision and I am seeking to quantify this. I hope that my colleagues here in the Senate will be prepared to fight to keep the Senate position in the final legislation.

Mr. METZENBAUM. Mr. President, what is the time situation at the present time?

The PRESIDING OFFICER (Mr. KOHL). The Senator has 3 minutes and 15 seconds.

Mr. METZENBAUM. And I understand the managers of the bill have 53 seconds remaining. It is my understanding the Senator from Louisiana is prepared to yield back the remainder of his time.

Mr. JOHNSTON. Mr. President, I yield back the remainder of my time.

Mr. METZENBAUM. Mr. President, the managers of the bill have yielded back their time. I yield back the remainder of my time.

VOTE ON MOTION TO TABLE AMENDMENT NO. 195

The PRESIDING OFFICER. All time for debate on the bill has expired.

Under the previous order, the question recurs on amendment No. 195, offered by the Senator from New Jersey.

Mr. JOHNSTON. Mr. President, I move to table the amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Louisiana [Mr. JOHNSTON] to table the amendment of the Senator from New Jersey [Mr. BRADLEY]. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 90 Leg.]

#### YEAS—55

Armstrong	Exon	McClure
Baucus	Ford	McConnell
Bentsen	Fowler	Murkowski
Bingaman	Garn	Nickles
Bond	Gorton	Nunn
Boren	Gramm	Packwood
Boschwitz	Grassley	Pryor
Breaux	Hatch	Robb
Bumpers	Hatfield	Shelby
Burdick	Heflin	Simpson
Burns	Helms	Stevens
Byrd	Hollings	Symms
Cochran	Inouye	Thurmond
Conrad	Johnston	Wallop
DeConcini	Levin	Warner
Dixon	Lott	Wilson
Dole	Mack	Wirth
Domenici	Matsunaga	
Durenberger	McCain	

#### NAYS—44

Adams	Heinz	Mitchell
Biden	Humphrey	Moynihan
Bradley	Jeffords	Pell
Bryan	Kassebaum	Pressler
Chafee	Kasten	Reid
Coats	Kennedy	Riegle
Cohen	Kerrey	Rockefeller
Cranston	Kerry	Roth
D'Amato	Kohl	Rudman
Danforth	Lautenberg	Sanford
Daschle	Leahy	Sarbanes
Dodd	Lieberman	Sasser
Glenn	Lugar	Simon
Graham	Metzenbaum	Specter
Harkin	Mikulski	

#### NOT VOTING—1

Gore

So the motion to lay on the table amendment No. 195 was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. COATS. Mr. President, I rise today to add my support to the Natural Gas Decontrol Act, and I commend the sponsors of the bill, Senators JOHNSTON and NICKLES, for their leadership on this issue.

As a Senator who represents an energy-consuming State, and as a former member of the Energy and Commerce Energy Subcommittee, I am pleased that Congress finally has this opportunity to take the necessary step of decontrolling the natural gas market. It is a market which has stabilized to the point where total decontrol will not hurt consumers in northern industrial States. In fact, I am convinced that decontrol, in the long run, will help those consumers.

In my own State of Indiana, we have long, cold winters, and the gas shortages of the late 1970's are still vivid in the memory of many of my constituents. Hoosiers deserve as many choices

as we can provide them, and I believe the best way to guarantee choices and ensure the availability of cheap energy is to let the market do its work.

Current environmental problems also emphasize the desirability of expanding energy alternatives. Natural gas is a clean-burning fuel. And with the threat of acid rain legislation, which would potentially cause a drastic increase in coal-burning electricity in Indiana, I believe a stable natural gas market and viable energy alternatives are increasingly important.

Mr. President, the natural gas industry has seen surprising and encouraging changes in the past decade. First, and foremost, the expected jump in natural gas prices after partial decontrol in 1985 never materialized. In fact, there has been a drop in prices of about 35 percent, a savings which has been passed on to consumers.

Second, through landmark decisions by the Federal courts and the Federal Energy Regulatory Commission, a more competitive pipeline system exists today, which gives more options to producers, pipelines, and suppliers.

These events have created a situation where, while 40 percent of 1988 production was still under NGPA price controls, the Energy Information Administration estimates that only about 6 percent was below the market price. The other 34 percent has, in effect, already been deregulated.

The time for deregulation has come. Consumers today are entitled to a free energy market that provides choices and savings. And I ask my colleagues to support this bill.

Mr. BOREN. Mr. President, today we take an important step toward the formulation of national energy policy. When the Senate passes H.R. 1722, as amended by the Energy Committee, we will move closer to ending 35 years of unnecessary natural gas price controls.

I would like to commend the chairman of the Energy Committee, Senator JOHNSTON, for his skill in moving this legislation through the Senate.

If anyone has any concerns about whether or not this legislation will increase our domestic energy supplies, they need only look at what happened when Congress decontrolled deep gas in the late seventies and early eighties. At a time when so-called experts were saying the United States had run out of natural gas, Congress turned loose the economic forces of the marketplace and the result was a surge in new natural gas reserves. We are today still working through the "gas bubble" created by that new supply.

There are those who say this legislation will result in higher prices to consumers. These are the same people who said there would be a fly-up in gas prices on January 1, 1985, when natural gas was partially decontrolled. In fact, since that time gas prices have

actually declined as market forces have begun to play an increasingly larger role.

Today's legislation will complete that process begun in 1985. By 1993 all natural gas will be priced according to market forces. Consequently our domestic energy producers will be better able to respond to changing market forces. There will be an adequate market reward for the risk of attempting to find new natural gas reserves, something that has been lacking over the last 20 years.

The future of natural gas as a major energy source is bright indeed. It is a clean fuel found in abundance in the United States. By removing the last remaining price controls on natural gas we will be giving our domestic independent energy producers that opportunity to do what they do best—find new sources of natural gas at the lowest possible cost. I urge my colleagues to support this legislation.

Mr. BURNS. Mr. President, I rise today in support of the Natural Gas Wellhead Decontrol Act of 1989. This bill would eliminate all remaining Federal controls on wellhead sales of natural gas effective January 1, 1993. This measure will allocate natural gas in the most effective manner possible—according to the laws of supply and demand. Competition in the marketplace is one of the goals in the bill before us.

Under the Natural Gas Policy Act of 1978, much of the domestic natural gas production in this country has already been decontrolled. But there remains a portion of natural gas production that remains under Federal control. This bill would move to decontrol that portion of production. The bill is a carefully crafted compromise of all concerned parties.

The American natural gas industry needs this bill. And, the American consumer needs this bill. Natural gas decontrol will move the industry ever closer to true marketplace competition. It is from that competition that the consumer will stand to benefit. In addition to the added competition that will result, the bill should enhance exploration for new and additional sources of domestic natural gas.

The industry has been severely depressed in the past several years. Exploration in Montana has fallen off dramatically. We need to do what we can to revitalize the basic industries of this country. Montana will benefit from additional exploration. And consumers will benefit from additional supplies and competitive pricing.

Mr. CHAFEE. Mr. President, we have just seen the Senate's decision on an energy policy that has been hotly debated for many years: natural gas price controls. Academics, politicians, and businesspersons have long argued over the effectiveness of price control

policies. In the Senate, the control and decontrol of the price of natural gas sparked controversy from the very first day of consideration, many years ago.

Why? Part of the reason for such heated debate is the fact that we live in a constantly changing energy environment. To ensure a reliable, inexpensive energy source—an increasingly difficult task—we must adapt our policies to fit the existing global energy situation.

Thirty-five years ago, price controls on natural gas came into effect as a result of a consumer protection and regulation measure approved by the Congress. However, 20 years later during the winters of 1975 and 1976, those same price controls were widely blamed for a severe natural gas shortage. Congress thus voted to partially decontrol the prices by passing the Natural Gas Policy Act of 1978, again to protect the consumer.

Today, we want to continue protecting consumers. But since our energy situation has changed once again, it is worth reevaluating the policy of partial natural gas price control. We need to make sure that the policy still "fits"; in other words, ensure that controlling prices still has a positive impact on the consumer.

As it turns out, we aren't sure that price controls on gas are still good for the consumer, given the difference in our energy situation today. Most of the gas still bound by the old price controls today sells for less than the fixed price ceiling. Only 6 percent of all gas is actually affected by the controls, according to the Energy Information Agency of the Department of Energy. That means that decontrolled gas effectively represents 94 percent of the gas we have in the market today.

In fact, there is a strong case to be made that natural gas price controls are having a negative effect on consumer prices. Many worry that price controls overregulate the market—that the long process of arranging new contracts inhibits the industry's ability to react quickly to consumer needs, and ends up costing everybody more.

But more importantly, we have seen the effects of the partial decontrol of the Natural Gas Policy Act of 1978. The final phase of decontrol was completed on January 1, 1985. Despite dire warnings, and many strong concerns, including my own, about a sudden fly-up in gas prices, it never occurred. In direct contradiction to these fears, the wellhead price per thousand cubic feet of natural gas fell from \$2.66 in 1984 to \$1.71 in 1988. Consumer prices during that time dropped by \$.66 per thousand cubic feet.

I think it is also important to keep in mind that, although we are now experiencing a greater supply of natural gas than demand, our energy needs are likely to increase. Let me take a

moment to consider my home State of Rhode Island.

Rhode Island is the smallest State in the country. We are only about 1,200 square miles in size. But we are the second most densely populated State in the country, with over 900 people per square mile. Add to that an active and growing economy, and you get substantial energy needs that continue to grow every year. Mr. President, I am proud of Rhode Island's energy conservation efforts. But these efforts cannot always mitigate the increasing energy need spurred by our economic expansion. Therefore, Rhode Island consumers and businesses need to be assured of a steady and reliable supply of natural gas, uninhibited by artificial constraints.

It is generally agreed that the price of natural gas will rise in the future whether this act passes or not. Given this fact, we need to be sure that no Federal policy actually helps prices increase, and we certainly must be sure that no policy inhibits quick reaction by the market to our needs.

Therefore, Mr. President, after careful consideration of the implications of decontrol for Rhode Islanders, I believe that decontrol of the remaining natural gas is the right step.

Mr. BRADLEY. Mr. President, it is with mixed feelings that I cast my vote against this bill today. As anyone knows who has followed these issues, I have tried to stay at the forefront of those who value and endorse competitive energy markets with a maximum of efficiency and a minimum of bureaucracy.

Although this bill is characterized as the decontrol bill, this is an overstatement. Gas price decontrol, as has been well-documented during this debate, is largely accomplished. The critical legislation was passed in 1978, the Natural Gas Policy Act. The bill that's considered today is much more limited and that, I believe, is its chief failing.

In the amendment I put before the Senate, my chief goal was to protect an essential part of a competitive gas market—open-access transportation. With the adoption of my amendment, I believed there would have been a necessary and symmetry to the bill a competitive wellhead price and a competitive transportation system—without one the other is less. As I have made clear in my statements, price decontrol at the wellhead is absolutely irrelevant without access to transportation. Unfortunately, my amendment was rejected by the Senate.

Clearly, there is a judgment call to be made. The proponents of the legislation acknowledge that it is a very limited bill. But we should not ignore the opportunity to insure a fully competitive and complete marketplace. I do not want to wait another 10 years before we try to broaden our legislative focus. Price decontrol without a

competitive transportation system is going only part way and is potentially mischievous in ways that could hurt the consumer and the producer.

Mr. JOHNSTON. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed for a third reading, and the bill to be read the third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 82, nays 17, as follows:

[Rollcall Vote No. 91 Leg.]

#### YEAS—82

Adams	Garn	Mitchell
Armstrong	Glenn	Moynihan
Baucus	Gorton	Murkowski
Bentsen	Graham	Nickles
Bingaman	Gramm	Nunn
Bond	Grassley	Packwood
Boren	Harkin	Pell
Boschwitz	Hatch	Pressler
Breaux	Hatfield	Pryor
Bumpers	Heflin	Reid
Burdick	Heinz	Robb
Burns	Helms	Rockefeller
Byrd	Hollings	Roth
Chafee	Humphrey	Rudman
Coats	Inouye	Sanford
Cochran	Jeffords	Sasser
Cohen	Johnston	Shelby
Conrad	Kasten	Simpson
Cranston	Kennedy	Specter
D'Amato	Kerry	Stevens
Daschle	Kerry	Symms
DeConcini	Lott	Thurmond
Dixon	Lugar	Wallop
Dodd	Mack	Warner
Dole	Matsunaga	Wilson
Domenici	McCain	Wirth
Ford	McClure	
Fowler	McConnell	

#### NAYS—17

Biden	Kassebaum	Metzenbaum
Bradley	Kohl	Mikulski
Bryan	Lautenberg	Riegle
Danforth	Leahy	Sarbanes
Durenberger	Levin	Simon
Exon	Lieberman	

#### NOT VOTING—1

Gore

So, the bill (H.R. 1722), as amended, was passed.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I want to thank my colleagues for passing this historic bill by such a large margin. I want to particularly thank Senator McCURE who has been such a leader all year—actually, for about a decade-and-a-half now on natural gas.

I want to thank Senator NICKLES from Oklahoma who has also been for all these years in the Senate a strong leader on natural gas. Senator BINGAMAN has been a coauthor, a constant help in this; Senator DOMENICI has been vitally interested and a big help; Senator WIRTH helped lead our floor activity, and was a very strong leader all along on natural gas. In fact, almost all the members of our committee, Mr. President, have been involved with this bill. I thank them all.

Mr. President, I think I mentioned first on the list, at least first on my list was Senator FORD. If I did not mention him, it is because he was first on the list, and too obvious. Actually, Senator FORD was our margin of victory in the Natural Gas Policy Act way back in 1978, and has been a strong leader ever since then.

Mr. President, I want to thank staff on our side of the aisle. This is Don Santa's first bill. He has been with the committee only 3 months, and he has come in magically and led the way on the staff side to get deregulation after 35 years. So that is a pretty good record in 3 months. Daryl Owen, our staff director, has done excellent work.

Mr. President, I must note that the minority staff working as a team has been helpful as well, and I would like to yield to Senator McCURE to talk about that.

Mr. McCURE. I thank the Senator for yielding. I certainly do want to compliment the chairman on the way in which he has handled that. If indeed we could perceive any difference over the last 20 years, he has a new staff member who in 3 months accomplished what all the rest of these fellows have been working on for 20 years. We should have gotten him sooner. Of course, we all know as a matter of fact that this is a long and sometimes difficult battle.

Through the 1970's and into the 1980's, there are a great many people who have figured in this battle—never anyone more constantly in the battle nor more effectively than the distinguished Senator from Louisiana, the chairman of the committee. My hat is off to him. Under his leadership and with his constant effort, we have been able to achieve what we have not been able to achieve in the past.

I want to particularly compliment Howard Useem with the minority staff, Frank Cushing, staff director, and the other staff members who have worked on this over a long period of time.

You know, I keep getting back to how long it has been, and how many hearings we have had, how many markup sessions we have gone through, and how many bills we have brought to the floor. Hopefully, we have now kind of capped that effort with this legislation. Of course, we have one more hurdle to go, and that is in conference with the other body. That conference does not appear to be difficult, although there is one issue upon which there is strong feelings on both sides of the Capitol, and on both sides of the issue. But that is not the kind of issue that causes this kind of measure to fail.

We will accomplish that conference. We will bring the bill back in agreement, and we will be able to get the conference report passed.

This is a very signal day for those who really do believe that price controls create shortages, and that free markets produce profits and keep prices lower in the long run. That is what the debate has been all about. I am very, very happy that we have achieved this result here today.

I thank the Senator from Louisiana.

#### SENATOR DOMENICI CALLS FOR WORLD ENERGY SUMMIT TO EXAMINE GLOBAL WARMING

Mr. JOHNSTON. Mr. President, recently, our good friend, the distinguished Senator from New Mexico [Mr. DOMENICI], gave a major speech on clean air issues to a summit meeting of environmental groups in Albuquerque, NM.

During that speech, Senator DOMENICI spoke of a variety of air pollution issues: local, national, and international.

While all of his comments were interesting, I was particularly impressed with his review of the global climatic situation, as it relates to clean air and energy use.

Concern continues to grow over the greenhouse effect. Senator DOMENICI rightly notes that global warming, as a result of pollution, could be "a disaster unlike any this planet has experienced during mankind's tenure."

During the speech, Senator DOMENICI goes on to discuss the huge increases that are forecast in the world's population, particularly in the Third World, and the accompanying increase that will occur in demand in energy, which Senator DOMENICI calls the "fundamental component" of economic growth.

Senator DOMENICI told the Albuquerque meeting that the United States must take the lead in develop-

ing a comprehensive international energy policy, beginning with an International Energy Conference designed to lead to the greater use of non-fossil-fuel sources, both here and throughout the developing nations.

Mr. President, Senator DOMENICI's speech was both wise and thoughtful. I ask unanimous consent that the portion of Senator DOMENICI's speech regarding energy issues and global warming be printed in the RECORD.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

EXCERPT OF SPEECH BY SENATOR PETE V. DOMENICI

#### GLOBAL ENVIRONMENTAL PROBLEMS

Now, let me turn to the international front. The other day, I heard a private talk given by a former leader of one of the great European democracies.

He talked of many things, but during his talk he cited four overriding problems that confront mankind—problems for us, for our children, and for their children. Included in those concerns were:

1. Population growth, and
2. The world environment, in particular global warming.

I want to spend the remainder of my talk discussing those challenges, particularly the second one, the challenge facing a planet on which the median temperature seems likely to be rising, quite possibly at a dangerous rate.

We know that global warming—the Greenhouse Effect—could be a disaster, a disaster unlike any this planet has experienced during mankind's tenure.

Many scientists predict that the accumulation of CO<sub>2</sub> and other gases will raise the planet's mean temperature in the next 50 to 60 years by 3 to 4 degrees centigrade, the same increase that brought us out of the Ice Age 18,000 years ago.

Because this issue is so complex scientifically, it is not clear whether or not these forecasts are accurate.

But we do not have the luxury of waiting until we know for certain what increases might occur.

We must act, recognizing that a "Greenhouse" cataclysm is possible. We must do all that we reasonably can to build a global awareness—and action—while more data is developed.

While global warming—or the extent of warming—may not yet be conclusive, one thing that is absolutely certain is that the number of people on this planet will continue to increase at a startling rate.

In the year I was born, 1932, about 2 billion persons lived on this planet. Today, there are just over 5 billion of us. The United Nations Population Fund now predicts that by the year 2025—36 years from now—there will be between 8½ billion and 10 billion human beings living on the planet.

Human experience tells us that each of those individuals will be seeking material advancement, a better life for themselves, certainly, a better life than their parents experienced in 1989.

Our country's policy is to encourage prosperity. The hallmark of America's world leadership since World War II has been to foster democracy and economic growth.

What that means, of course, is that the world of the early 21st century will not only

be a far more populated world, but it will almost certainly be a world of far greater consumption than exists today.

And of that huge increase in population, about 90 percent will occur in nations of the Third World.

These developing nations will demand—and justly demand—their fair share of the economic growth. They will very possibly experience a growth rate faster than our own.

Those billions of new humans will not sit gladly in mud huts, thankful that they are contributing to a better environment. They will demand a better life, and they will deserve it.

So with that framework, let me pose a question: What is the fundamental component of that economic growth, the growth after which billions of humans are—and will be—clamoring?

The answer is energy.

Without energy, our standard of living will collapse and mankind's survival is threatened.

That doesn't mean we can't be more efficient in our use of energy. But the combination of the twin growth in population and human expectations make it certain that energy demand will expand.

And since the burning of fossil fuels is tied so very closely to what appears to be a warming of the planet, we confront a situation we dare not avoid.

We—as individuals and as government officials—face a challenge that can be called “staggering.”

The risk of doing nothing is horrendous. We must act, and we must begin to act promptly to meet this challenge—not just the challenge of protecting our climate, but the challenge of ensuring that energy is available for mankind's progress.

We cannot wait until incontrovertible scientific proof appears to validate or invalidate the estimates on global warming.

With all this in mind, I have concluded that we will not suddenly scale down energy use. Such a change will be politically unsustainable in the United States and Europe. And other countries, the developing nations, simply will not accept the fact that they cannot improve their standard of living.

Because of what America is—the richest and most powerful nation, the nation that is responsible for about 25 percent of the man-produced carbon dioxide—we simply must take the lead in addressing the climatic situation that will affect all human beings.

Recognizing all of that means we must take the lead to develop a comprehensive international energy policy to meet the challenges ahead and to move toward energy sources that will not endanger our atmosphere.

If we don't I can assure you that no one else will.

For millions of years, CO<sub>2</sub> was in balance on this planet. Nature produced—and consumed—about 100 billion tons of CO<sub>2</sub> a year through the natural cycle of photosynthesis and respiration.

Mankind upset that balance when we began to burn wood and later coal and oil in vast quantities. Even though man's activities produce just 6 billion tons of CO<sub>2</sub>—about 1 ton per person per year—much of that 6 billion tons has not been consumed in the environment, but accumulated in the atmosphere.

We can't eliminate the build-up, but I would like to suggest several steps that I believe are a pre-requisite to reducing the rate

of future CO<sub>2</sub> accumulations. These are not magical solutions, but they will definitely move us forward.

First, President Bush is absolutely correct in calling for the negotiation of an international treaty on global warming. That has been done, and the conference will take place beginning this October in Washington, D.C. Forty or so nations will examine the financial, economic, technical, and legal issues for responding to climate change.

Once those nations develop the framework for an international treaty, they will take that document to meetings of the Intergovernmental Panel on Climate Change next summer for further evaluation.

I can't begin to suggest to you what such a treaty will look like, but I am encouraged that we are moving forward.

More than a decade ago, Senator Dale Bumpers and I initiated the groundbreaking hearings that led to an international treaty reducing the use of CFCs—chlorofluorocarbons—by 50 percent in the industrialized nations by the end of the century. CFC gases are not only “greenhouse” gases, but they are the culprits for depletion of the ozone layer.

We are going back to the table to negotiate a total phase-out of CFCs. While the CFC issue was a far easier challenge than CO<sub>2</sub>, we now have a history of global environmental co-operation.

Second, I recommend that the White House establish an inter-agency group to develop policy options on ways to reduce CO<sub>2</sub> emissions, and submit those proposals to the Congress. It would be appropriate if such a task force were led jointly by EPA Administrator Riley and Energy Secretary Watkins.

I must tell you that last fall I was able to work with Senator Leahy of Vermont to get \$13 million so EPA could begin to study policy implications of global warming. That was a good start.

A related concern is research into the basic science of global climatic change. Overall, in the current fiscal year, the Federal Government is spending \$134 million for such research. Next year, in the Budget the Congress just approved, we will spend about \$190 million.

That sounds great. I support it. But I warn you of one unfortunate fact: There really isn't much co-ordination in this spending, which is spread among half a dozen agencies. We must find ways to focus that effort more effectively, to develop solutions to particular problems.

I certainly intend to work within the Senate's Energy Committee, on which both Senators Bingaman and I serve, to move us toward a coordinated effort.

And certainly, our national laboratories—including Los Alamos and Sandia—have the skills and knowledge to become leaders in this effort.

The list of worldwide science and policy issues regarding the climate is extensive.

What more can we learn about the methane cycle, since methane is believed to be the second most significant contributor to climatic change?

What is the role of clouds in climatic change, and the role of the oceans?

To what degree is the price of energy a factor in emission forecasts?

What do we do about Third World deforestation, which contributes an estimated 20 percent of the CO<sub>2</sub> mankind sends to the atmosphere? How do we reverse a situation where for every tree that is planted in the Third World, 10 are cut down?

My third and primary proposal is this: The United States should call for an International Energy Conference to encourage all nations to begin to address energy use and new sources that are compatible with our world environment. Our nation must take the lead in encouraging the use of sources of energy other than fossil fuels.

That doesn't mean our oil fields will be closed down. What it means is that we absolutely must increase our research into alternative, cleaner sources of energy.

Such a conference is valid, whatever the impact of global warming.

Right now, the Federal government is spending just over \$500 billion a year for research into high-temperature fusion.

We need a much stronger effort on solar energy.

And while many of you may disagree with me, I am convinced we must move toward greater use of nuclear energy, starting with a stepped-up effort to design fail-safe nuclear power plants.

We must move toward a long-term worldwide energy policy, particularly one that encourages technology transfer assisting the Third World.

And we certainly need to bring the industries and countries of the world into this dialogue.

Before closing, let me cite the example of China.

China today produces an estimated 10 percent of the man-made CO<sub>2</sub>. And China, with its population exceeding 1 billion is in the midst of its own Industrial Revolution.

China also happens to possess vast quantities of coal, the resource that could propel China into the First World. It is a resource that will obviously accelerate worldwide CO<sub>2</sub> emissions. And it is also high-sulfur coal, the kind that produces acid rain.

Do we tell China: Sorry, you can't use your coal?

And even if we did, would they listen?

I think the answer is obvious. It will only be through a coordinated international effort that countries such as China will be able to leap into the future without committing horrendous damage to this planet.

I think the answer is obvious. It will only be through a coordinated international effort that countries such as China will be able to leap into the future without committing horrendous damage to this planet.

Mankind has probably never faced a more difficult challenge. It is one that will require our every skill—both scientifically and politically—even if the problem is only a fraction as bad as some forecast.

I guess there is no one in this room who doesn't know that I am an optimist. I believe we can meet that challenge. But we will only meet it if we recognize it for what it is—possibly the greatest challenge in the history of this beautiful planet.

## RECESS

Mr. JOHNSTON. Mr. President, on behalf of the majority leader, if no one else wants to be heard at this time, I ask unanimous consent that the Senate stand in recess until 2 p.m. today.

There being no objection, the Senate, at 12:47 p.m., recessed until 2:01 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ADAMS].

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

#### ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, for the information of Senators, as I announced earlier in the week, it is my hope that we will be able to proceed today to consideration of the nomination of Richard Burt, to be the Chief Negotiator for the United States at the START negotiations with the Soviet Union.

Early in this week I received a telephone call from the Secretary of State, James Baker, who asked that I attempt to move this nomination through the Senate, so that Mr. Burt will be in a position to begin his duties when those negotiations commence in the very near future.

However, there has been objection to Senate consideration of Mr. Burt's nomination, and accordingly, after some discussion, we were able to obtain an agreement that limits the debate on consideration of the nomination to 1 hour, when it is brought up; but we do not yet have agreement on when to bring it up. We are attempting to obtain that agreement now and have been attempting to do that throughout the day.

It remains my hope that we will be able to get to the Burt nomination later this afternoon, have the hour of debate that is permitted under the unanimous-consent agreement now in force with respect to that nomination, and have a vote today, the vote occurring at or around 6 p.m. But that is the reason for the delay in proceeding, as we attempt to work out a process by which we can consider a vote on this nomination, as requested by the President and the Secretary of State.

I might note that what we are trying to do here is to accommodate the President and the Secretary of State. We will continue to do so with respect to this nomination.

#### RECESS UNTIL 3 P.M.

Mr. MITCHELL. Mr. President, since we do not have that matter resolved yet, I see no useful purpose in merely requesting or suggesting the absence of a quorum. I will therefore ask unanimous consent that the Senate now stand in recess until the hour of 3 p.m., and I hope at that time to have an announcement—I hope to have worked this matter out—and that we will be able to deal with this nomination later this afternoon.

The PRESIDING OFFICER. Therefore, under the unanimous-consent request, it is so ordered that the Senate stand in recess until the hour of 3 p.m.

There being no objection, the Senate, at 2:04 p.m., recessed until 3:02

p.m.; whereupon the Senate reassembled when called to order by the Presiding Officer [Mr. LEVIN].

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

#### ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, we have been as yet unable to resolve the matter with respect to proceeding on the nomination of Richard Burt to be the Chief START Negotiator, and therefore, I am unable to advise Members of the Senate at this time when we will get to that matter, if at all.

#### MORNING BUSINESS

Mr. MITCHELL. Accordingly, Mr. President, I ask unanimous consent that there now be a period for morning business not to extend beyond 3:30 p.m. with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER (Mr. CONRAD). Without objection, it is so ordered.

Mr. LEVIN addressed the Chair.  
The PRESIDING OFFICER. The Senator from Michigan.

#### DETROIT PISTONS VICTORY

Mr. LEVIN. Mr. President, as the whole world knows, last night the Detroit Pistons won the NBA Championship by beating the Los Angeles Lakers in four straight games. Last night's win capped several years of hard work by the Pistons, and reminded me of the way I used to play basketball. That is a joke, Mr. President. [Laughter.]

With Isiah Thomas serving as a catalyst, Pistons' guards Joe Dumars and Vinnie Johnson were virtually unstoppable in the finals, scoring 262 of the Pistons' 409 total points against the Lakers. Late-season acquisition Mark Aguirre added to the Pistons' potent offense. This offense was combined with an impenetrable defense provided by Rick Mahorn, Bill Laimbeer, John Salley, Dennis Rodman, and James Edwards. It was Coach Chuck Daly, my personal fashion mentor, who put it all together; and Bill Davis, the owner, whose vision and investment in this team reached fruition last night.

As the Lakers learned, the combined team effort proved overwhelming. Dennis "the Worm" Rodman and John "Spider" Salley came off the bench and crawled all over the boards at both ends. Their play made it easier for Isiah "Zeke" Thomas and Vinnie "the Microwave" Johnson to heat up the Pistons' offense and light up the scoreboard. The blistering performance of Joe Dumars, who shot 57 percent and scored 109 points through the finals, earned him the series' Most

Valuable Player Award. The only thing Joe Dumars did not come away from this series with was a nickname.

Bill Laimbeer and James "Bhudda" Edwards kept even the legendary Kareem Abdul Jabbar from being a dominating factor. The Pistons' defense kept the Lakers to under 100 points again last night for the second time in the finals, and that Pistons' defense is probably the best defense in the history of the National Basketball Association.

Mr. President, for the 1989 basketball fan, the State of Michigan is the place to be. First, the University of Michigan Wolverines performed in the clutch to capture the NCAA championship, and now the Pistons have dominated the NBA playoffs. This is only the second time in history that one State has been able to achieve such success. Even the regular season Most Valuable Player, Lakers star Magic Johnson, comes from Michigan.

So, Mr. President, we are proud of our Pistons for delivering this championship. They have shown what sheer hard work and determination can do, and they have made all of us in Michigan very proud indeed.

#### ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I ask unanimous consent that at 5 p.m. today the Senate go into executive session for the purpose of considering the nomination of Richard Burt to be Chief START Negotiator under the time agreement previously entered into.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I am authorized to state that the Republican leader has no objection to that request.

Therefore, Senators should be aware that at 5 p.m. the Senate will go into executive session to take up Mr. Burt's nomination. Under the previous order, debate on that matter will be limited to 1 hour, so that if all of the allotted time for debate is used, the vote on the Burt nomination will occur at about 6 p.m. If all the time is not used, then the vote will occur prior to 6 p.m.

Senators should be aware then that a rollcall vote may occur on the Burt nomination at or prior to 6 p.m.

#### RECESS UNTIL 4:30 P.M. AND ORDER FOR MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate now recess until 4:30 p.m. and that at 4:30 p.m. there be a period for morning business not to extend beyond 5 p.m. with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the Senate at 3:21 p.m., recessed until 4:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. Ford].

#### MORNING BUSINESS

The PRESIDING OFFICER. The Senate is now in morning business. Each Senator is authorized to speak for not more than 5 minutes.

The PRESIDING OFFICER. The Chair, as a Senator from the State of Kentucky, suggests the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair reminds the Senator we are in a period of morning business and he has 5 minutes.

#### HOWARD SIMONS

Mr. MOYNIHAN. Mr. President, I rise to report to the Senate what Senators will already know, which is that yesterday, Howard Simons, the ex-managing editor of the Washington Post and most recently the curator of the Nieman Foundation for Journalism at Harvard University, died.

This event, which comes to us all, came sooner than it ought to Howard Simons, who was such a life force in his time that it is hard to realize he has gone.

He knew this was coming. He was diagnosed with pancreatic cancer. A former science writer himself, he had no illusions of the imminence of his failing. He reported it immediately to his charges, if you would like, among the Nieman fellows. He finished his term and then his life itself finished.

He was, Mr. President, a friend and confidant of so many persons in this city, Nation, and world, that one almost feels presumptuous speaking of him in a sense that might suggest a more personal relation than others would have had.

I would only record that he and his lovely, talented wife, Tod, were special friends of my wife, Elizabeth, and myself. They were Albanyans and would frequently stop with us on their way up from Washington, across New York State, to Albany. And we came to know him, the personal man, the Albany, the impish and wide-ranging Howard Simons who would perhaps not always make himself known in the city room of the Washington Post.

In an extraordinarily sensitive obituary in this morning's Post, Mr. Noel Epstein records Katharine Graham as

saying: "He filled an essential and even a heroic role at The Post." And we will always recall that description in the context of the necessary, dogged and in the end hugely consequential inquiry into the Watergate affair. But much more than that was involved.

Donald E. Graham, now the publisher of the Post, says, "Howard was one of the two basic forces, with Ben Bradlee, that created the paper you are reading today. One hopes that his principles, his news judgment, his flair, his wit and the people he chose and inspired will be part of the Post for decades to come."

I am sure we would all join in that wish and, by extension, hope that his influence will endure in American journalism at large. It was so appropriate for him to leave a specific assignment when his work was surely achieved there, and move on to the general curatorship of promise and great expectations in American journalism, which are the Nieman fellows.

I would like to record, Mr. President, that in his youth in Albany his great ambition was to be not a journalist but a cartoonist. He never lost his fascination with that most revealing and devastating form of commentary. It summed up much of his own life: the economy, the sense of absurdity, the wit and the relevance and, in the end, the geniality and kindness that the great cartoonists bring to their subject, which is often American political life. He brought those same qualities to his subject, which was American journalism reporting on that political life.

We mourn him. We shall not see his like again. But we are privileged to have lived in a time in which we could partake of his work and benefit from that extraordinary career. I am sure the Senate will join me in extending our deepest sense of sorrow to his bereaved widow, Tod, and to his associates, both at the Washington Post and the Nieman Foundation.

Mr. President, I thank the Senate for its kind attendance on this sad occasion.

I ask unanimous consent that the obituaries in the Washington Post and New York Times be printed in the RECORD.

There being no objection, the obituaries were ordered to be printed in the RECORD, as follows:

[From the Washington Post, June 14, 1989]

HOWARD SIMONS, EX-MANAGING EDITOR OF POST AND NIEMAN CURATOR, DIES

(By Noel Epstein)

Howard Simons, the managing editor of The Washington Post from 1971 to 1984 who played an important part in this newspaper's rise to national prominence, died yesterday of pancreatic cancer in Jacksonville Beach, Fla. He was 60 years old.

Since 1984 Mr. Simons had been curator of the Nieman Foundation for Journalism at Harvard University, where he helped to

select and educate Nieman fellows—journalists selected for a year's study on any subject that interests them. It was a second career that ideally suited a man whose life was marked by a restless intellect and an urge to teach.

His pancreatic cancer was diagnosed in April. As a former science writer, he knew it was a terminal disease that would act quickly, but he carried on through the end of the academic year, helping to choose the next academic year's Nieman fellows and then hosting the 50th anniversary celebration of the Nieman Foundation in early May. That event, attended by many past fellows, became in part a testimonial to Mr. Simons, who told all who asked not to feel sorry for him. "I have no regrets—none, zero," he said, joking that he was enjoying the opportunity to stop eating bran and using dental floss. He stepped down as curator of the Nieman Foundation at the end of May.

As managing editor of The Post, Mr. Simons was responsible for day-to-day administration of the newsroom, which grew from 400 to 550 people during his tenure. Mr. Simons presided over the daily meetings where editors discuss which stories belong on the front page.

But he was more than a boss and a manager. Mr. Simons was famous at The Post for his sense of humor and for the personal attention he gave to the individuals who put out the paper. David S. Broder, the paper's longtime political writer, remarked: "I think of Howard moving across the newsroom with that sort of Groucho Marx stride of his, stopping probably 20 times between the [managing editor's] office and the men's room—if that's where he was headed—to listen to somebody's tale of woe, congratulate somebody, or whatever. He provided so much of the human touch."

He also provided journalistic guidance on many big stories, including the biggest one in the paper's history, which became known as the Watergate. That story began on Saturday morning, June 17, 1972, when a friend of Mr. Simons's, Joseph A. Califano Jr., a Washington lawyer who was then general counsel of the Democratic National Committee, called Mr. Simons to tell him there had been a break-in at the committee's offices in the Watergate office building.

From that day on, Mr. Simons was actively involved in guiding the coverage that transformed this newspaper's reputation and contributed to the downfall of Richard M. Nixon as president.

Bob Woodward, who with Carl Bernstein unearthed the White House coverup of the burglary and then exposed many of the Nixon administration's secret political operations, described Mr. Simons as "the day-to-day agitator, the one who ran around the newsroom inspiring, shouting, directing, insisting that we not abandon our inquiry, whatever the level of denials or denunciations."

Mr. Simons helped immortalize one key Woodward source, a man who would speak only on "deep background," which meant he could not be quoted even anonymously. Mr. Simons dubbed the source "Deep Throat," after a well-known pornographic film.

When a movie was made of Woodward and Bernstein's first book, "All the President's Men," Martin Balsam played the role of the managing editor. But to Mr. Simons's sometimes-bemused frustration, in the movie the managing editor was a minor character who was an obstacle to Woodward and Bernstein, at one point arguing that the story should be taken away from such junior re-

porters. In fact, Mr. Simons fought to leave the two young reporters on the story when other editors argued that it should be given to more seasoned journalists.

Benjamin C. Bradlee, the paper's executive editor, said: "For 15 years Howard Simons played an absolutely vital role in all the historic events in which the Post was involved. His eclectic, original mind was brought to bear with great originality and humor."

"Howard was a unique individual and editor," said Katharine Graham, chairman of The Washington Post Co. "He filled an essential and even an heroic role at The Post."

"He focused our attention on the sciences. He developed talent and encouraged young people of all kinds and kept in touch with them. He played an important role in the Watergate editing. He made a wonderful team for 13 years with Ben Bradlee."

Donald E. Graham, publisher of The Post, said: "Howard was one of the two basic forces, with Ben Bradlee, that created the paper you are reading today. One hopes that his principles, his news judgment, his flair, his wit and the people he chose and inspired will be part of The Post for decades to come."

Unlike many journalists who concentrate singlemindedly on their work, Mr. Simons maintained a wide range of outside interests and hobbies, from Indian arrowheads to bird-watching. He often teased colleagues who could find nothing to hold their interest outside the newsroom. Mr. Simons loved to travel, read and take pictures.

Mr. Simons' interest in journalism began at an early age. When he was 7 or 8, he and two friends put out a one-page newspaper with a printing kit and tried to sell it for a penny.

Mr. Simons was born on the eve of the Great Depression, on June 3, 1929, and grew up in Albany, N.Y. At the time of his birth, his father, Reuben, an immigrant from Poland, owned a children's clothing store in Albany, but the Depression forced him out of business. His mother, Mae, went to work as a sales clerk in another clothing store; it took his father more than a year to find a job selling insurance.

Howard Simons took a job sweeping the floor of a grocery store when he was a sixth-grade student. It was the first of many jobs he held as a boy and young man to get through high school in Albany, Union College in Schenectady, and Columbia University's graduate school of journalism. During his first year of college he washed dishes, sold ice cream in the dormitories at night, cleaned floors in a beauty salon and worked in the college library.

Mr. Simons' Jewish identity was a source of great pride. In his book of oral history on the American Jewish experience, "Jewish Times," published in 1988, he wrote: "I grew up in a heavily Italian Catholic neighborhood, liberally sprinkled with Irish Catholics . . . Most but not all of my friends were Jewish. I was a member of a Jewish Boy Scout troop; went to Hebrew school; attended Jewish day and summer camps; belonged to a Jewish high school fraternity; and spent hours at the Jewish Community Center . . ."

A large part of being Jewish, Mr. Simons said, was telling jokes and laughing. He attributed this largely to the example set by his mother, a natural wit. "I grew up thinking all Jews were funny," Mr. Simons wrote.

His first regular job in journalism was at a Washington news agency called Science

Service, which he joined in 1954. His work quickly reflected his eclectic interests. In 1956, for example, he was planning a trip to Moscow, where he would write a 10-part series on Soviet science advances, articles that foreshadowed the Kremlin's stunning launch of Sputnik the next year. To get there he wanted an adventure. He wangled a Saturday Evening Post assignment to hitch a ride across the Atlantic in a little Piper Apache with Max Conrad, an aviator known as "the flying grandfather." It was not a comfortable crossing.

"He could barely move except to cross his legs," recalled his wife, Tod Simons.

Before leaving, she said, he had arranged for a Washington florist to deliver a rose and a note to her every day. They were married five days after he returned.

In 1958, Mr. Simons won a Nieman fellowship and spent a year at Harvard. He came back to Washington and resumed work as a free-lance writer. His jobs included writing speeches for President Dwight Eisenhower's science adviser, George Kistiakowsky, a Harvard professor.

Mr. Simons joined The Washington Post as a reporter in 1961. He wrote on subjects ranging from space satellites and cybernetics to a scientist's mock paper, based on Scripture, that concluded that heaven must be at least 75 degrees Celsius hotter than hell.

The stories of which he was proudest concerned a U.S. hydrogen bomb that was lost when a B-52 bomber collided with a refueling aircraft off the coast of Palomares, Spain. Four unarmed H-bombs fell from the B-52, but only three were found on the ground. The fourth disappeared—a fact official Washington was not eager to advertise.

Mr. Simons tried to persuade The Post's editors to send him to Spain to get the story, but they refused. So he found out from Washington what had happened. The government was forced to admit that one bomb had been lost. After an 80-day search it was found in the Mediterranean. That effort won him the Raymond Clapper award for the year's best reporting from Washington.

In 1966, as he began to remake The Post, Bradlee named Mr. Simons assistant managing editor; in 1970 he was appointed deputy managing editor and in 1971 assumed the post he would hold until he left the paper in 1984.

Realizing that he would not succeed Bradlee, just seven years his senior, Mr. Simons left the paper when the Harvard post offered him an irresistible opportunity. He enthusiastically moved into a new life in Cambridge, shifting his nurturing talents from newsroom to campus.

"He was the quintessential nurturer of talent," said Derek Bok, president of Harvard. "He chastised those who settled for second best, praised those who pursued excellence and inspired virtually every young journalist with whom he came into contact."

Mr. Simons' urge to help others spread beyond his professional work. He devoted his energies for many years to helping Native Americans. According to Suzan Harjo, executive director of the National Congress of American Indians, Mr. Simons helped a Native American publisher in New York start a newspaper, keynoted an annual meeting of her group, hosted an annual Nieman Foundation dinner for Native American leaders and tried to assist aspiring Native American journalists.

At an airport in Spain in 1985 Mr. Simons was struck by the thought that internation-

al airlines could raise substantial funds for sick and hungry children if they would just collect the unspendable coins of tourists as they left a country. He suggested this idea in an article he wrote for the Wall Street Journal, then worked with several members of Congress and UNICEF, the United Nations Children's Fund, to establish a program that has attracted the participation of five airlines. Just this week UNICEF decided to give a special medal to Mr. Simons in recognition of his contribution.

In addition to his wife, Tod, Mr. Simons is survived by four daughters, Anna and Rebecca Simons of Cambridge, Mass., Julie Simons of Alexandria, and Isabel Simons of Norfolk, Va.; and by his brother, Sanford. The family asks that contributions in his memory be sent to the National Congress of American Indians, 900 Pennsylvania Ave. SE, Washington, D.C. 20003. The group is planning to establish a fund in Mr. Simons' name to help Native American journalists.

[From the New York Times, June 14, 1989]

HOWARD SIMONS DIES AT AGE 60, AN EX-EDITOR AT WASHINGTON POST

(By Alex S. Jones)

Howard Simons, a former managing editor of The Washington Post, died yesterday of pancreatic cancer in a hospice of Methodist Hospital in Jacksonville, Fla. He was 60 years old and lived in Jacksonville Beach.

Until recently, Mr. Simons had been curator of the Nieman Foundation, which sponsors a prestigious sabbatical program in which mid-career journalists are given a year of study at Harvard University.

Mr. Simons was known as a journalistic traditionalist who prized aggressive reporting and was outspokenly critical of what he considered to be a modern trend toward lighter, less serious newspapers and an undue dependence on anonymous sources.

"He played a vital role in everything that the paper did," Benjamin C. Bradlee, executive editor of The Post, said in an interview yesterday. "He was a powerhouse here, and a mensch."

As managing editor of The Post, Mr. Simons helped direct the paper's investigation of the 1972 Watergate burglary that eventually led to the resignation of President Richard M. Nixon two years later.

"He got short-changed by the movie," Mr. Bradlee said, referring to the film "All the President's Men," noting that Mr. Simons "led the charge" on Watergate.

Mr. Simons' journalistic hallmark was an energetic aggressiveness that he sometimes described as "280 miles per hour going into first." In recent years, he often railed at what he considered to be a dearth of probing investigative reporting. "How could Ollie North have gotten away with it for so long?" he asked rhetorically in an interview a month ago.

#### BROADENED REACH OF PROGRAM

In 1984, after 13 years as managing editor of The Post, Mr. Simons became curator of the Nieman Foundation. The appointment suited his custom of nurturing those who worked for him with a mixture of affection and hard-boiled hectoring.

Mr. Simons had been a Nieman Fellow in the class of 1959, and as curator broadened the program's reach to include more journalists from parts of Africa and South America. He had also successfully led a fund-raising campaign that increased the foundation's endowment by over \$1 million.

In early April, Mr. Simons learned that he was terminally ill with pancreatic cancer and elected not to take any treatment, instead addressing his illness with the frankness and astringent wit that had been one of his signatures. He said he had bet his doctor that he had incurable liver cancer, and was angry at himself as a former science writer for the misdiagnosis. When asked what he was going to do in Florida, he would crack that he planned to sunbathe without sunscreen.

Though clearly in a weakened state, he insisted on fulfilling his duties as host at ceremonies marking the 50th anniversary of the Nieman program.

Late last month, he resigned as curator and went to Jacksonville Beach with Tod, his wife of 32 years, where he was able to indulge his passions for fishing and birdwatching. Mrs. Simons said yesterday that upon arriving in Florida he had plunged into collecting and categorizing seashells.

"We have lost one of the great spirits and souls of American journalism," said Bill Kovach, who was named acting curator of the Nieman Foundation last month.

Mr. Simons was a native of Albany, N.Y., and received a bachelor of arts degree from Union College in Schenectady in 1951 and a master's degree a year later from the Columbia University Graduate School of Journalism.

After service in the Korean War, he became a science reporter in Washington for several news organizations, and joined *The Post* as a science writer in 1961. He became assistant managing editor in 1966 and managing editor in 1971.

Mr. Simons is the author of "Jewish Times: Voices of the American Jewish Experience," published by Houghton-Mifflin in 1988, and "Simons' List Book," published in 1977. He edited two books with Joseph A. Califano Jr., "The Media and the Law" and "The Media and Business," and in 1986 wrote a spy novel with Haynes Johnson called "The Landing."

Mr. Simons said yesterday that there was as yet no plan to memorialize her husband. "His memorial service was really the last two months," she said of the flood of letters, articles and visitors after Mr. Simons' illness became public.

Mr. Simons is survived by his wife, the former Tod Katz, and four daughters: Anna, who returned from studies in Africa to be with her father; Isabel, who lives in Maryland; Julie, of Washington, and Rebecca, of New York City. He is also survived by a brother, Sanford Simons.

#### TRIBUTE TO SOUTH CAROLINA STATE REPRESENTATIVE WILLIAM CORK OF BEAUFORT

Mr. THURMOND. Mr. President, I rise today to pay tribute to South Carolina State Representative William Cork, who unexpectedly passed away last Saturday, June 10, 1989. Mr. Cork was a fine man who made many significant contributions to his community and to his State.

Mr. Cork was born on May 18, 1937, in Ware Shoals, SC. He attended the University of South Carolina, where he was a cheerleader and member of Sigma Alpha Epsilon fraternity, and obtained his bachelor's degree in 1959.

Mr. Cork was a civic and business leader for many years, and his busi-

ness developments were a major boon to the economy in Hilton Head Island, SC. He was vice president of Sea Pines Plantation Co. and Sea Pines Homebuilders from 1964 to 1965. In 1966, he opened the island's first furniture and decorating business, Hilton Head Interiors. He was also the owner and developer responsible for the plantation center on Hilton Head Island. In 1974, Mr. Cork started a company named Cork Sails, Inc., during that time he also served as president and coowner of CBS Travel, Inc. He was a corporate director of the Bank of Beaufort, and in 1982 he was elected vice chairman of the board.

In addition to these many accomplishments in the business world, Mr. Cork was actively involved in the betterment of his community. He was an honorary member and past president and director of the Hilton Head Rotary Club. He was also a past officer and director of the Hilton Head Jaycees, as well as past president and director of the Point Comfort Property Owner's Association. Mr. Cork was a devoted member of St. Luke's Episcopal Church.

Mr. Cork was first elected to the South Carolina House of Representatives in 1982. He later served as minority whip and was chairman of the joint tourism caucus, positions in which he performed ably. He also served as a member of the joint committee on energy, the joint water resources study, the pensions committee and the National Conference of State Legislatures.

Representative Cork's unfortunate passing came without warning to those who loved him. However, I am confident that his memory will flourish in their minds. He was a fine man who was highly respected in the State legislature, and it was my honor to work with him for the good of South Carolina.

I would like to extend my most sincere condolences to his lovely wife Helen and his family: his daughter, Holly Ann Cork; his son, William N. Cork III; his brother, John C. Cork; his sister, Mrs. William C. Collings; and his mother, Mrs. Margaret Massey Cork.

I ask unanimous consent that the following article regarding Mr. Cork be included in the *RECORD* at the close of my remarks: "Cork Leaves Legacy of Living in Joy."

There being no objection, the article was ordered to be printed in the *RECORD*, as follows:

[From the Beaufort Gazette, June 12, 1989]

#### CORK LEAVES LEGACY OF LIVING IN JOY

Gov. Carroll Campbell, on the spur of the moment Saturday morning, may have said it best: "Nobody loved life more than Bill Cork. . . . No one loved this island and South Carolina more."

This legislator must have loved the heavenly fragrance of gardenias. Only a few

hours before his untimely death, he picked them from his garden for his guests.

With action, he demonstrated his love for the salt marsh. He once said the sounds of "crackin' and poppin'" he heard from the deck of his home on Point Comfort convinced him of the need for SAA classification to protect the Bluffton area's unpoluted waters.

With a love that would not let his feet keep still, William Neville "Bill" Cork loved music. Whether he was playing it on spoons or dancing the shag, his rhythm was infectious.

Bill Cork loved the games of horses and lobbied his colleagues in the S.C. House of Representatives to approve pari-mutuel betting on horse races to make money for the state. It's an idea whose time may yet come.

He loved the tales and artifacts of Lowcountry history and, along with his wife, Helen, wanted to help create the Museum of Hilton Head Island to preserve the traditions. It's an idea moving forward.

A lover of fresh air, he worked against the odds in this tobacco-rich state to ban smoking from the S.C. House of Representatives' chamber.

Many years before many of the present residents moved here, Bill Cork, a young businessman, loved the people of this island enough to help start a fire department to save their lives and property, loved them enough to help start the Lowcountry Auction to raise money for the schools.

In time he came to love the communities of Hilton Head Island, Bluffton, Daufuskie and the Burton area enough to represent District 123 in the Statehouse from 1983 until June 10, 1989, at 4:45 a.m. In that capacity, probably more than any other legislator, Bill Cork came to understand the importance of tourism as the state's second largest industry.

With public service comes conflict, controversy and the public's constant eye, and Mr. Cork seemed to love even the tension of his stressful role.

Leaving a legacy of community spirit and a list of achievements, Bill Cork left the Lowcountry, his friends and family something especially his right up to the end: a profound joy in simply being alive.

#### SPEECH BY DR. GUY STORY BROWN IN HONOR OF JOHN C. CALHOUN

Mr. THURMOND. Mr. President, Dr. Guy Story Brown of the Office of Educational and Cultural Affairs of the U.S. Information Agency delivered an address before the Maryland Division of Confederate Sons at Fort McNair in Washington, DC, on April 20, 1989. The commander of this organization, Mr. Charles Goolsby, requested that I place an edited version of the address in the *CONGRESSIONAL RECORD*. I am pleased to do so and ask unanimous consent that it follow these remarks in the *RECORD*.

There being no objection, the remarks were ordered to be printed in the *RECORD*, as follows:

#### REMEMBERING JOHN CALDWELL CALHOUN, 1782-1850: "A REASONING, HIGH, IMMORTAL THING"

John Calhoun was born to Patrick and Martha Caldwell Calhoun on March 18,

1782, in the last year of the War for American Independence. He was named for his maternal uncle, Major John Caldwell, who had been murdered in cold blood by Tories only a few months before. His father, a strong Jeffersonian, even an anti-Federalist, died when he was about 13. Young John was virtually illiterate—he could hardly read or write more than his own name—until he was 13 years old.

The first book that he read was an English translation of the French historian Charles Rollin's "Ancient History" in eight volumes. The second was John Locke's "Essay Concerning Human Understanding," then as now regarded as one of the most celebrated and difficult books ever written in the English language. His attempt, at the age of 13, to master this book, one of the greatest books of all time, and others, broke his health, and his mother removed him from the school in which she had belatedly enrolled him—his brother-in-law's school. From this time until he was 17, he worked in the fields as an overseer of his family farm. When he was 17, he went back to school and applied himself to Latin, Greek, mathematics and philosophy. In 1802, he arrived at Yale University in New Jersey at the age of 20, "straight from the backwoods." He was soon elected to Phi Beta Kappa, the academic honor society, and in 1804, as the outstanding student in the college, he was asked to provide a commencement address. He worked very hard on it. It was entitled, notably enough, "The Qualifications of a Statesman."

After a brief legal career and a term in the South Carolina Legislature, Calhoun was married and elected to the United States House of Representatives in 1810.

Within a few weeks of his arrival in Washington, he was appointed to the chairmanship of the House Foreign Affairs Committee. Calhoun and Henry Clay, later known as the "Great Compromiser," more than any other two figures led the country into "Mr. Madison's war," the great War of 1812. Calhoun himself introduced the bill for declaring war on June 3, 1812.

From this pinnacle, he went on to become Secretary of War at the age of 35 in the Cabinet of President James Monroe. As such, Calhoun is remembered as the Father of West Point, the Father of the Army, and architect of the most intelligent policy toward the Indians that this country has ever seen. And this in the face of his own experience with the Indians, which I have already mentioned.

From this position, he was elected to a term as Vice President in the administration of President John Quincy Adams—the youngest, with Richard Nixon and Dan Quayle, to ever serve as Vice President—and then, to a term as Vice President to General Andrew Jackson. During this period, Calhoun wrote the "South Carolina Exposition and Protest" and his famous letters to the people of South Carolina and to General Hamilton.

In these years he spoke out definitively on the national bank, abolition, on an independent treasury, on foreign policy and the Mexican War; in short, on every issue of significant interest.

Jefferson Davis, among others, said that Calhoun had a capacity for foresight that often seemed to verge on prophecy. And, of course, as almost everyone knows, he said in the spring of 1850 (within a few weeks or even days of his death) that the Union called the United States would not last; it would divide. "I fix its probable occurrence

with 12 years, or three Presidential terms," he said. "You," he said to Senator Mason of Virginia, "and others of your age will live to see it; I shall not. The mode by which it will be done is not so clear; it may be brought about in a manner that no one now foresees. But the probability is that it will explode in a Presidential election." This is the most famous—and the most grimly accurate—prediction in American history.

Calhoun died on the morning of March 31, 1850 at the age of 68. His funeral was held in the Senate on April 2, and he was laid in a vault in the Congressional Cemetery. On this occasion, Senator Clay's most memorable sentence was: "I was his senior in age, Mr. President; in nothing else." Senator Webster's speech is not comparable to this. I am quoting from Daniel Webster's eulogy to Calhoun in the Senate, April 5, 1850:

"Mr. Calhoun was calculated to be a leader in whatsoever association of political friends he was thrown. He was a man of undoubted genius, and of commanding talent. He is now an historical character. Those of us who have known him here will find that he has left upon our minds and our hearts a strong and lasting impression of his person, his character, and his public performances, which while we live, will never be obliterated. We shall hereafter, I am sure, indulge in it as a grateful recollection that we have lived in his age, heard him, and known him."

John Calhoun was, truly, a southerner without peer, who has a prominent place in our greatest pantheon. It is "the purity of his exalted patriotism, his devotion to the country and, even more, to the Constitution, that most deserves our remembrance unto death."

So spoke Senator Webster in the Senate in 1850. For an understanding of that purity and that exaltation, of his noblest legacy to us, it is to Calhoun's discourse on the Constitution and government, above all, that we must turn.

God bless John Calhoun. God bless the thin grey line.

The Senator from Massachusetts is recognized.

Mr. KENNEDY. I thank the Chair.

(The remarks of Mr. KENNEDY pertaining to the reintroduction of S. 1182 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### THE PRESIDENT'S VETO MESSAGE

Mr. DOLE. Mr. President, I was pleased to hear the distinguished Senator from Massachusetts speak earlier on the minimum wage. Just a few moments ago, the House sustained President Bush's veto of the minimum wage conference agreement.

#### NO SURPRISES

I was not surprised by the President's veto—nor am I surprised by the House's action today. I know that my Republican colleague from Utah [Mr. HATCH] is not surprised. And I am sure that my distinguished colleague from Massachusetts—the manager of the bill here in the Senate—is not surprised. So, there have been no surprises.

#### LOST OPPORTUNITIES

But Congress has had plenty of opportunities. That is for sure. We have had opportunities to do something really worthwhile for the working men and working women of this country; opportunities to increase the minimum wage.

And we could have done it easily, with a 90-cent increase over a 3-year period in the minimum wage and a 6-month training wage from, \$3.35 to \$4.25 an hour, which would put some people out of work but not nearly as many as the Democratic package.

We had an opportunity to save jobs despite a minimum wage increase and all these opportunities have been squandered. As I said, if we want a minimum wage, we could have had a good one. The ink from the President's pen would be drying this very minute. We would now be at the White House at a Rose Garden signing ceremony. Maybe not; it may be raining. Maybe we would be indoors. But we would be down there for the signing ceremony.

#### STOP PLAYING POLITICS

Last week—on this floor—I urged Congress to stop playing politics with the minimum wage. I said that playing politics might be fun for some of us around here—but it is not fun for those in this country who really want—and need—a minimum wage increase.

So let us stop the political point scoring. Let us leave the point scoring to the football field and basketball court, in this case the Detroit Pistons. We do not have a scoreboard here in the Senate.

#### COMMITMENT TO A MINIMUM WAGE INCREASE

I know I have said it before. But I must say it once again. I supported—and I continue to support—a minimum wage increase. I voted for it in the past and my record is pretty good. And that is why I—along with my distinguished colleague from Utah—hope that we will be able to reach agreement on a minimum wage bill that will be acceptable to the President.

And let me make it clear: the President and the Secretary of Labor, their proposal was serious. They meant it. Some said, "Why did they do that? Why didn't they come in at \$3.85 an hour? Then they could negotiate \$4.25 and everybody could say, 'Oh, boy, look what we did.'"

They were honest. The President made a commitment. They were up front. They said, "OK, let's go to \$4.25. Let us have a 6-months' training wage."

The President was not going to play games with Congress. He made a promise. He wanted to keep it. Right off the bat, he did what he thought was responsible. And I certainly share his view and share the views of the

Secretary of Labor, most of the time, and in this instance.

Mr. President, I would say that I do not disagree with the distinguished Senator from Massachusetts. Maybe there is some way to work it out. I think the President is willing to try. I do not think he is going to come off the \$4.25, but there may be some way to work it out.

This is what the President has done. His proposal is not a paper tiger. It calls for a 27-percent increase over the existing minimum wage of \$3.35 an hour. Let me repeat that—that is a 27-percent increase. It goes 75 percent of the way to \$4.55 an hour, the Democratic proposal. That is more than a compromise on the part of the President. That is three-fourths of the way. That is a real commitment to a minimum wage.

So it would seem to me that there may be opportunities. I know the President certainly did not veto this bill with any joy in his heart because he feels for those working people. He knows they need an increase. What he wants is action. Let us get together and see if we can do it.

#### GAO AND OTA GENERALLY EXONERATE VA FROM WASHINGTON POST ALLEGATIONS REGARDING VA'S FISCAL YEAR 1986 PATIENT TREATMENT FILE MORTALITY ANALYSIS

Mr. CRANSTON. Mr. President, on October 13, 1988, I made a statement (RECORD S15649) regarding VA's fiscal year 1986 patient treatment file mortality analysis and, more specifically, a very disturbing October 11, 1988, front page Washington Post article—entitled "VA Researchers Ordered To Report Fewer Problem Hospitals"—which alleged that the Chief Medical Director of the Veterans' Administration, now the Department of Veterans Affairs [VA], had altered the design of a mortality study so that more favorable results would be obtained.

In order to provide for an objective assessment of this matter, I requested both the Office of Technology Assessment and the General Accounting Office to review several aspects of VA's actions with regard to the VA mortality study. I asked OTA to review the VA methodology to determine its scientific reliability and validity. I asked GAO to determine: First, the point in time at which the decision was made to use a higher confidence level for measuring overall mortality rates between hospitals; second, why the decision was made to use the higher confidence limits for the aggregate data; third, the person or persons responsible for making that decision; and fourth, if the Chief Medical Director or any other VA official inappropriately attempted to give the appearance of fewer quality-assurance

problems within VA medical centers than actually exist.

Recently, both OTA and GAO have issued reports in response to my requests. OTA, in its report entitled "Assessment of the Veterans' Administration's Method of Analyzing Its Hospital Mortality Rates," which was released on April 17, 1989, appears to support VA's methodology. When commenting on the confidence limits applied to the statistical test used—the aspect of the study alleged to have been altered—OTA concludes that:

There is no scientific basis for choosing one level of significance over another or even for restricting the results reported to one level of significance instead of several. Using a different level of significance does not change the ordering of the hospitals; the level of significance influences only the number of hospitals identified for further examination. One may draw no conclusions about the relative quality of care in VA versus Medicare hospitals on the basis of these analyses.

GAO, in its report entitled "Allegations Concerning VA's Patient Mortality Study"—GAO/HRD-89-80—which was released on May 18, 1989, states:

We cannot conclude that the Chief Medical Director or any VA official inappropriately attempted to give the appearance that VA had fewer hospitals with higher-than-expected mortality rates than actually exist. It is understandable, however, how others could have developed this perception.

GAO also notes that:

The decision to use the 99-percent confidence level was made by the research health science specialist responsible for the study methodology—not by the Chief Medical Director.

Mr. President, I believe that the analyses of both OTA and GAO were objective and thorough, and I am satisfied with the results of their inquiries. On June 6, 1989, the Washington Post published on page 3 an article entitled "GAO Finds No Evidence VA Medical Official Acted Improperly," and on June 11 the Post Ombudsman, Richard Harwood, published a piece entitled "Unnamed Sources."

Mr. President, I ask unanimous consent that these two articles be printed in the RECORD at the conclusion of my remarks, followed by OTA's April 17, 1989, letter and the text of the May 1989 GAO report.

THE PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CRANSTON. Mr. President, on Tuesday, June 13, the Secretary released the results of VA's in-depth study of the 44 medical centers which its mortality review showed had higher than expected mortality rates. I will be commenting on the findings of the report.

[From the Washington Post, June 6, 1989]

#### GAO FINDS NO EVIDENCE VA MEDICAL OFFICIAL ACTED IMPROPERLY

(By Barbara Vobejda)

The General Accounting Office has reported it cannot conclude, based on information provided by the Department of Veterans Affairs, that the department's chief medical director improperly ordered his staff to produce a report lowering the number of veterans' hospitals suspected to have high mortality rates.

But some department staff members interpreted the insistence of the medical director, Dr. John A. Gronvall, that they use a different methodology in studying mortality rates and his concern over the department's public image as instructions to produce a lower number of suspect hospitals in their report, the GAO said.

"We didn't find any evidence that Dr. Gronvall knowingly tried to influence the results of the study or acted inappropriately," said David P. Baine, the GAO's director of federal health care delivery issues.

Donna St. John, a department spokeswoman, said Gronvall was traveling yesterday and could not be reached for comment.

Sen. Alan Cranston (D-Calif.), chairman of the Committee on Veterans Affairs, requested a GAO investigation after The Washington Post reported last fall that Gronvall directed researchers to produce a report showing fewer problem hospitals. A preliminary survey had found as many as 12 percent of the 172 veterans hospitals appeared to have high mortality rates.

The GAO reported that Gronvall repeatedly had maintained that the agency should use the methodology similar to that employed by the Health Care Financing Administration (HCFA) to study mortality rates, against the advice of his staff. If a similar methodology were used, Gronvall had argued, then the results of the HCFA and veterans studies would be comparable.

"The Chief Medical Director was convinced that the HCFA methodology was the 'gold standard' and, if used by VA, would show results similar to HCFA's study," the GAO reported. "... We believe, however, that the Chief Medical Director communicated his wishes regarding the methodology and the protection of VA's public image in a manner that gave the appearance to many VA staff that he was ordering that study results be altered."

Gronvall ultimately approved the recommendation of his staff members that their own methodology be used.

Department staff had told Gronvall in January 1988 that preliminary data showed 22, or 12.8 percent of veterans' hospitals, had higher-than-expected mortality rates, according to the GAO. The GAO could not document the 12.8 percent figure.

At issue between Gronvall and his staff was the "confidence level" to be employed in the study. Using a 99-percent confidence level—meaning in 99 of 100 cases the study could be duplicated with the same results—the agency found that 3.5 percent of its hospitals would show higher-than-expected mortality rates. Using a 95-percent confidence rating, 7 percent, or 12 hospitals, showed high mortality rates.

The department used both levels in its study, relying on a 95-percent level to measure mortality rates in categories based on a patient's diagnosis, and a 99-percent level for calculating summary mortality rates for individual hospitals.

The GAO said the specialist responsible for choosing the study methodology decided to use a 99-percent confidence level "because it increased VA's confidence that the hospitals identified had differences between the observed and expected mortality rates that she considered meaningful."

The department has not released the study or named the problem hospitals.

[From the Washington Post, June 11, 1989]

#### UNNAMED SOURCES

(By Richard Harwood)

The use of anonymous "sources" is the pandemic of journalism in the United States. The practice produces, most of the time, trivial bits of information: "Yes, it's true that the president will speak at Old Siwash, but for God's sake, don't quote me." On occasion an important revelation comes over the transom about the nature of the society we inhabit, evidence, perhaps, of skulduggery most foul. Just as often it produces garbage and encourages fearful or conniving informants to even scores, embellish stories or blacken the reputation of rivals and enemies.

As an antidote, The Post's policy manual promises that we will "disclose the source of all information" published in the newspaper; but there is a loophole, somewhat wider than the Pacific Ocean: "when at all possible." Problems sail through.

#### Item One:

On the 12th of October last year, the Des Moines (Iowa) Register published an editorial accusing Dr. John Gronvall, the chief medical officer of the Department of Veterans Affairs, of promoting "disingenuous, untruthful and bad medicine."

Dr. Gronvall, according to the editorial, "ordered researchers to skew the results of a mortality survey out of fear it would make the VA hospitals look bad. . . . There are any number of reasons for a higher mortality rate in the vets' wards. But rather than seek the truth and learn from it, he ordered the examination halted."

The editorial was inspired by a story that had appeared two days earlier on the front page of The Washington Post under the headline, "VA Researchers Ordered to Report Fewer Problem Hospitals." The story touched off an investigation by the General Accounting Office, which last week reported that Dr. Gronvall had not "inappropriately attempted" to "skew the results" of the study in question. His only misstep, the GAO said, was getting involved in a statistical quarrel that led some of his subordinates to believe he was trying to cook the numbers. In any case, GAO concluded that the study was conducted properly and that the medical director was without fault.

The Post's story and Dr. Gronvall's black eye were products of the bureaucratic cannibalism that goes on every day in agencies all over town. A disaffected researcher leveled the original accusations against the doctor, under the cloak of anonymity, which we offer far too freely in this shop.

#### OFFICE OF TECHNOLOGY ASSESSMENT,

Washington, DC, April 17, 1989.

HON. ALAN CRANSTON,

Chairman, Committee on Veterans' Affairs,  
U.S. Senate, Washington, DC.

DEAR ALAN: I am pleased to transmit an OTA Staff Paper entitled "An Assessment of the Veterans Administration's Methods of Analyzing Its Hospital Rates," which you requested. The Staff Paper reviews the approach used by the Veterans Administration

(VA) and compares it with that used by the Health Care Financing Administration.

Using mortality rates to indicate the quality of hospitals' care has not yet been shown to produce reliable and valid results, in the sense of identifying hospitals with quality-of-care problems. In fact, the statistical analysis of hospital mortality rates is part of a larger VA effort to assess their usefulness in quality assurance. The VA is now reviewing medical records in 44 hospitals whose mortality rates were significantly higher than expected. A study scheduled to begin later this year will examine deaths in both high- and low-outlier hospitals.

Although the VA based its approach on the methods HCFA used for its 1987 data release, the methods differ in some respects. Some of the differences stem from the particular patient populations, institutional arrangements, and data sets of the two agencies. Other differences concern adjustments for patients' risks of dying and statistical interpretation of the results. Both of these differences are matters on which researchers may, and do, reasonably disagree.

There is no scientific basis for choosing one level of significance over another or even for restricting the results reported to one level of significance instead of several. Changing the level of significance does not change the ordering of hospitals by mortality rate; the level of significance influences only the number of hospitals identified for further examination. Which level of significance to use therefore depends on a benefit-cost calculation regarding the number of problem hospitals likely to be identified for different levels of expenditures, and decisions would be constrained by the funds available for the review.

Additional copies of the Staff Paper may be obtained by calling the Health Program at 8-6590.

We will be happy to answer any questions you may have about our findings, and I invite you to call me or Jane Sisk, Study Director in the Health Program, at 8-6590.

Sincerely,

JOHN H. GIBBONS.

[U.S. General Accounting Office—Report to the Chairman, Committee on Veterans' Affairs, U.S. Senate, May 1989]

#### VA HEALTH CARE: ALLEGATIONS CONCERNING VA'S PATIENT MORTALITY STUDY

##### GENERAL ACCOUNTING OFFICE,

Washington, DC, May 18, 1989.

HON. ALAN CRANSTON,

Chairman, Committee on Veterans' Affairs,  
U.S. Senate.

DEAR MR. CHAIRMAN: As requested in your October 12, 1988, letter (see app. I), we have reviewed allegations made in an October 11, 1988, Washington Post article that the Veterans' Administration (VA)—now the Department of Veterans' Affairs—altered the design of its patient mortality study to obtain results more favorably to VA. The article alleged that VA's Chief Medical Director ordered that the confidence level used in calculating the number of VA medical centers that had higher-than-expected mortality rates be changed from 95 to 99 percent in order to arrive at lower number of hospitals with potential quality assurance problems. Specifically, you requested that we answer the following questions:

Did the Chief Medical Director or any other VA official inappropriately attempt to give the appearance that VA had fewer quality assurance problems at its medical centers than actually exist?

Why was the decision made to use a 99-percent confidence level to calculate summary hospital mortality data, who made this decision, and at what point in the study was it made?

#### RESULTS IN BRIEF

Based on information provided by VA, we cannot conclude that the Chief Medical Director or any VA official inappropriately attempted to give the appearance that VA had fewer hospitals with higher-than-expected mortality rates than actually exist. It is understandable, however, how others could have developed this perception.

The Chief Medical Director did not initially take the advice of knowledgeable staff who believed that it was inappropriate for VA to use the same methodology that the Health Care Financing Administration (HCFA) used in conducting a similar study of Medicare patients. He repeatedly maintained that if VA used HCFA's mortality study methodology, the results of the two studies would be comparable. Further, on several occasions, he expressed concern to his staff about what a high number of hospitals with high mortality rates would do to VA's public image. His insistence on using HCFA's methodology and his concern over VA's image were interpreted by some staff as instructions to assure that the studies' results were similar. Ultimately, the Chief Medical Director approved the recommendation of VA staff to use their own methodology.

VA used both the 95-percent and the 99-percent confidence levels on its mortality study. The 95-percent level was used for determining mortality rates in individual group or diagnosis categories, and these rates were used to identify hospitals for quality assurance reviews. The 99-percent level was used for calculating summary mortality data for individual hospitals for presentation to the Chief Medical Director.

The decision to use the 99-percent confidence level was made by the research health science specialist responsible for the study methodology. She made this decision in February 1988. She used a 99-percent level because it increased VA's confidence that the hospitals identified had differences between the observed and expected mortality rates that she considered meaningful.

#### SCOPE AND METHODOLOGY

In conducting this review, we interviewed VA officials who worked on, or were involved with, VA's patient mortality study, including those in VA's Offices of Quality Assurance and the Chief Medical Director. We reviewed documents and correspondence related to the study and spoke with the Washington Post reporter who wrote the article that precipitated our review. In addition, we discussed the issues with other GAO staff familiar with the VA and HCFA mortality studies, and with Office of Technology Assessment officials whom you asked to review VA's mortality study methodology.

We conducted our review in accordance with generally accepted government standards. Our work was performed between November 1988 and February 1989.

#### DEVELOPMENT OF VA'S MORTALITY STUDY

In the fall of 1987, before HCFA released its study of hospital mortality data,<sup>1</sup> VA's

<sup>1</sup> In December 1987, HCFA publicized hospital-specific mortality rates for Medicare patients hospitalized during 1986.

Chief Medical Director decided that VA medical center mortality rates should be analyzed to provide data for use in VA's quality assurance activities. A February 16, 1988, VA circular stated that the results of the study were intended to serve as a guide for conducting focused reviews to lead to an assessment of the quality of medical care in VA medical centers. It also cautioned that mortality rate analysis would not measure hospital performance and that no conclusions could be drawn about the quality of care based solely on the results of the mortality data.

The VA study compared the mortality rates in each hospital with VA systemwide patient death rates. These rates had been adjusted for patient characteristics through the use of a statistical technique called a logistic regression model. Discharged patients were divided into groups based on whether a procedure was performed during the hospital admission and, if so, what type. Patients were then placed into 1 of 14 primary diagnostic categories (e.g., cancer, severe heart disease; see app. II for complete list of groups and diagnostic categories).

A report was produced for each medical center for each patient group and primary diagnosis category. For any categories in which 10 or more deaths occurred, it was determined whether the ratio of observed mortality to expected mortality was statistically significant at the 95-percent confidence level.<sup>2</sup> On this basis, VA found there were 43 hospitals—25 percent of the total—that had a higher-than-expected mortality rate in at least one patient group/diagnosis category. Upon completing the comparison of the hospital mortality rates with VA systemwide rates, VA initiated additional reviews to determine whether hospitals with higher-than-expected mortality rates actually had problems in their medical care. To do so, VA's peer review organizations examined charts of patients included in the study.

According to the Chief Medical Director, his objective in initiating a mortality study was to determine whether mortality rate comparisons could be useful for quality assurance purposes. In addition, he wanted to have VA mortality data available for comparison with the HCFA mortality data released in December 1987. He wanted VA to use a study methodology as similar as possible to that used by HCFA, which he said was considered the "gold standard" at that time. He was convinced that VA hospitals provided care comparable to private sector hospitals and was initially insistent that VA hospital mortality rates be reviewed by the same methods that HCFA used for Medicare patients in private sector hospitals. He was concerned that any deviation from the HCFA standard might be criticized as an attempt to make VA hospitals appear better than private sector hospitals.

Early in the planning of the study, the former Director of VA's Office of Quality Assurance and the research health science specialist in charge of developing the methodology explained to the Chief Medical Director that although VA could use the HCFA methodology as a guide, there were

differences in the data bases and VA would use a different test of statistical significance. Although both HCFA and VA analyses compared hospital-specific mortality rates with systemwide rates, VA chose to modify the HCFA methodology, in part, because the VA patient population is significantly different from that of the HCFA study. The VA patient population was 98 percent male, of whom 60 percent were under the age of 65, while the HCFA Medicare patient population consisted of more equal numbers of men and women, most of whom were 65 or older. Further, the way in which the VA study defined patient diagnosis differed from the way it was done in the HCFA study. HCFA used the principal diagnosis, which is defined as the main reason for admission to the hospital, while VA's data files record the patient's primary diagnosis, which represents the condition accounting for most of the days spent in the hospital.

In addition to noting these differences in the data bases, VA's research specialist said that the HCFA statistical test was inappropriate because she believed that, to some extent, it predetermined study results by including a factor called interhospital variance.<sup>3</sup> According to the research specialist, adjusting for interhospital variance assured HSFA that only 2.5 percent of its hospitals would fall above and below the range of expected rates.<sup>4</sup>

VA's Office of Quality Assurance officials proposed a different statistical procedure that did not include the interhospital variance factor. They believed it was important to acknowledge differences in hospitals and that, for quality assurance purposes, VA's study should identify a higher proportion of hospitals that the HCFA study. The Office of Quality Assurance staff also explained that because of differences in the data bases and the statistical test used, no direct comparisons could be made between VA and HCFA mortality study results. We did not evaluate VA's rationale for not using HCFA's statistical methodology.<sup>5</sup>

The Chief Medical Director did not accept this position and continued to urge that VA adopt HCFA's methodology. Conversely, his staff continued to insist that use of the HCFA methodology was not appropriate, particularly for VA's quality assurance purposes. Ultimately the Chief Medical Director agreed to use the methodology proposed by his staff.

#### PRELIMINARY STUDY RESULTS NOT ACCEPTABLE TO CHIEF MEDICAL DIRECTOR

In a January 1988 meeting, the former Director of the Office of Quality Assurance told the Chief Medical Director that VA's preliminary data showed that 12.8 percent (or 22) of VA's hospitals had higher-than-

expected hospitalwide mortality rates. (This figure is not to be confused with the 43 hospitals identified as having higher-than-expected mortality rates in one or more of the patient group/diagnosis categories as discussed on p. 3.) We could find no documentation for this 12.8-percent figure, nor could anyone in the VA tell us its origin. (The former Director of the Office of Quality Assurance died in April 1988.) The research specialist told us, however, that at that time she had not calculated a percentage of hospitals having overall higher-than-expected mortality rates.

The Chief Medical Director was disturbed with the 12.8-percent figure because he had expected results close to those HCFA had obtained. He could not understand how VA could have such different results if it were using HCFA's methodology as he had directed. He was concerned, he said, about negative public reaction to VA mortality study results that were much higher than HCFA's. He again stressed to the former Director of the Office of Quality Assurance and his staff that VA's methodology be as close to HCFA's as possible, and that he expected results similar to HCFA's results. Many staff at this meeting interpreted these statements as instructions to alter VA's mortality study results. However, the Chief Medical Director also requested that other researchers review the proposed methodology. The research specialist said that three VA researchers and one outside expert reviewed and concurred with the methodology VA was using. The perspectives were shared with the Chief Medical Director, who then agreed to proceed.

In February 1988, the research specialist said that the former Director of the Office of Quality Assurance asked her to prepare an overall observed to expected mortality ratio for each hospital using the VA methodology for a presentation to the Chief Medical Director.

#### OVERALL MORTALITY DATA CALCULATED USING 99-PERCENT CONFIDENCE LEVEL

According to VA's research specialist, summary mortality data were calculated on individual hospitals because such data would be easier to use in a discussion with the Chief Medical Director than all the individual group or diagnosis category data. She said she had produced no summary data before this time. She used a 99-percent confidence level to determine the statistical significance of the ratio each hospital's overall actual observed mortality rate to an expected rate generated from the results of the analysis. (See footnote 2 on p. 3.)

She said she chose a 99-percent confidence level because the aggregated data for most hospitals represented very large numbers of cases; thus, she thought a statistical test at the 95-percent confidence level would have identified a large number of hospitals that had only very small differences between the observed and expected mortality rates. By contrast, she said, the 95-percent confidence level was appropriate for the analysis of mortality rates for the group/diagnosis categories because those categories encompassed many fewer cases. Moreover, VA wanted to identify as many hospitals as possible for the follow-up quality assurance reviews. For summary data, however, that were not intended for quality assurance purposes, using the 99-percent confidence level increased VA's confidence that the hospitals identified had differences between the observed and expected mortality rates that VA considered meaningful. At that confidence

<sup>2</sup> If observed and expected mortality are the same, the ratio equals one. The discrepancy between the observed and expected mortality rates indicates how much better or worse the outcomes of patients are at specific hospitals compared to those of patients treated at other hospitals. (*VA Hospital Care: A Comparison of VA and HCFA Methods for Analyzing Patient Outcomes*, GAO/PEMD-88-29, June 30, 1988.)

<sup>3</sup> The interhospital variance factor allows for systematic differences among hospitals, such as quality of care provided, severity of illness, or administrative differences, that could not be accounted for in the statistical analysis. Inclusion of this factor has the effect of reducing the number of hospitals that fall above the range of expected rates, but not by any given percentage.

<sup>4</sup> As reported by HCFA, inclusion of the interhospital variance factor reduced the number of hospitals that would fall above the range of predicted rates, but to a level of 4 percent rather than 2.5 percent. Without the interhospital variance factor, the proportion of hospitals with significantly higher-than-expected overall mortality rises to 11 percent.

<sup>5</sup> For additional information on VA's mortality study methodology, see the Office of Technology Assessment's April 1989 staff paper for the Senate Committee on Veterans' Affairs.

level six hospitals—3.5 percent of the total—had overall mortality rates higher than expected. When these figures were presented to the Chief Medical Director in February 1988, he was satisfied with the results, the methodology, and the statistical test used.

According to the research specialist, she was not requested by the Chief Medical Director or anyone else to produce a study result that would be closer to HCFA's or that showed fewer hospitals with high mortality rates than actually exist. She added that she had never calculated summary data using a 95-percent confidence level before our November 1988 request for such data. (At the 95-percent confidence level, 12 hospitals—7 percent of the total—had overall mortality rates that were higher than expected.<sup>6</sup> She also said she did not know the origin of the 12.8-percent figure presented in the January 1988 meeting by the former Director of the Office of Quality Assurance.

#### STATUS OF VA'S MORTALITY STUDY

In June 1988, the VA Administrator decided that no study results would be published until follow-up studies could be completed on the hospitals that had higher-than-expected mortality rates in one or more of the group/diagnosis categories using the 95-percent confidence level. According to the Chief Medical Director, the follow-up studies were to identify hospitals where quality of patient care was less than optimal or where practices deviated from commonly accepted standards of medical practice. VA's Medical District Initiated Peer Review Organizations have completed focused reviews in these hospitals. VA plans to present the results to the Congress by the middle of May 1989.

#### CONCLUSION

We cannot conclude that the Chief Medical Director or any other VA official acted inappropriately. The Chief Medical Director was convinced that the HCFA methodology was the "gold standard" and, if used by VA, would show results similar to HCFA's study. Further, the use of a 99-percent confidence level for determining overall study results was not used to lower a previously determined number of hospitals with higher-than-expected mortality rates as alleged in the Washington Post article. We believe, however, that the Chief Medical Director communicated his wishes regarding the methodology and the protection of VA's public image in a manner that gave the appearance to many VA staff that he was ordering that study results be altered.

We emphasize that the actions discussed in the October 1988 Washington Post article occurred while the mortality study was in progress and that the summary hospital mortality rates discussed within VA were not final results. As of May 1, 1989, no mortality data have been released to the public.

#### AGENCY COMMENTS

By letter dated May 8, 1989 (see app. III), the Secretary of VA transmitted comments of the Chief Medical Director on a draft of this report. The Chief Medical Director said he initially intended that VA hospital mortality be directly compared with the mortality experience of Medicare patients in community hospitals. He asked VA staff to use a

study methodology identical or similar to that used by HCFA and assumed that when this same statistical analysis was applied to the Medicare-certified and VA hospitals, approximately the same proportion of hospitals would be identified as having higher-than-expected mortality rates. Because of differences between VA and Medicare records, the Chief Medical Director acknowledged that no direct comparisons of mortality data could be made. Thus, he said no conclusions can be drawn about the quality of VA care compared to that of community hospitals.

We are sending copies of this report to other congressional committees and subcommittees; the Director, Office of Management and Budget; the Secretary of Veterans Affairs; and other interested parties. Major contributors to this report are listed in appendix IV.

Sincerely yours,

DAVID P. BAINE,  
Director of Federal  
Health Care Delivery Issues.

#### APPENDIX I.—REQUEST LETTER

U.S. SENATE,  
COMMITTEE ON VETERANS' AFFAIRS,  
Washington, DC, October 12, 1988.  
HON. CHARLES A. BOWSER,  
Comptroller General of the United States,  
General Accounting Office, Washington,  
DC.

DR. JOHN GIBBONS,  
Director, Office of Technology Assessment,  
Washington, DC.

DEAR CHARLES AND JACK: I am writing to request that both the General Accounting Office and the Office of Technology Assessment look into matters pertaining to the Veterans' Administration (VA) FY 1986 Patient Treatment File Mortality Analysis.

Enclosed is an October 11, 1988, Washington Post article, entitled "VA Researchers Ordered to Report Fewer Problem Hospitals", in which it is alleged that the VA altered the design of its mortality study so that more favorable results would be obtained. According to the article, the confidence limits—the range within which there is a probability of concluding that there is a true or real difference between the observed and predicted—were expanded from 95 percent to 99 percent. It is my understanding that such a change might result in decreasing the number of VA medical centers erroneously identified as having a higher mortality rate than predicted, but would also have the potential for missing some centers with a higher than predicted mortality rate in need of further study. According to the article, over the objection of the VA's then-Director of Health-Care Quality Assurance, the VA's Chief Medical Director (CMD) "ordered the researchers" to come up with a lower number of potential problem hospitals because the CMD reportedly was concerned that the "VA could not withstand the criticism that 'inevitably' would result from comparison between its survey" and the survey of mortality in private hospitals released by the Health Care Financing Administration (HCFA) in December 1987.

I believe that these allegations and the VA's methodology warrant a detailed study and investigation at this time. Thus, as Chairman of the Veterans' Affairs Committee, I am requesting that the Office of Technology Assessment carry out a study designed to address the following issues:

1. Was the methodology utilized by the VA when analyzing its hospital's mortality rates a scientifically valid and reliable meth-

odology? In responding, please specifically address the appropriateness of using either 95-percent or 99-percent confidence limits of changing the confidence limits after the data have been gathered.

2. Is the methodology utilized by the VA comparable to that utilized by HCFA? If not, in what ways do they differ and is one methodology preferable to the other?

I am requesting that the General Accounting Office investigate the following matters:

1. At what point in the development and implementation of this study was the decision made to use higher confidence limits for measuring overall mortality rates between VA medical centers, why was that decision made, and who was responsible for making that decision?

2. Did the Chief Medical Director or any other VA official inappropriately attempt to give the appearance of fewer quality-assurance problems at VA medical centers that actually exist?

Because of the serious nature of the allegations and the need to keep the public informed of the degree to which high quality health care is being provided within all VA medical centers, I am requesting that these studies be expeditiously undertaken.

Thank you for your continuing assistance. I look forward to working with you in proceeding with these reviews. Should you have any questions, please have your staff contact Sandi Isaacson, Professional Staff Member (224-9126).

With warm regards,  
Cordially,

ALAN CRANSTON,  
Chairman.

#### APPENDIX II.—PATIENT GROUPS AND DIAGNOSTIC CATEGORIES USED IN VA'S PATIENT MORTALITY STUDY

##### PATIENT GROUPS

1. Nonsurgical (patient did not have a procedure).
2. Surgical procedure (patient had a surgical procedure).
3. Operative diagnostic/palliative procedure (patient had a surgical procedure for diagnostic purposes alone, e.g., biopsy).
4. Nonoperative procedure (e.g., CAT scan).

##### DIAGNOSTIC CATEGORY

1. Cancer.
2. Cerebrovascular disease.
3. Severe heart disease.
4. Metabolic and electrolyte disorders.
5. Pulmonary disease.
6. Ophthalmologic disease.
7. Low-risk heart disease.
8. Gastrointestinal disease.
9. Renal and urologic disease.
10. Orthopedic conditions.
11. Infectious and parasitic disease.
12. Symptoms and ill-defined conditions.
13. Aftercare, rehabilitation, follow-up examinations.
14. All other conditions.

<sup>6</sup> The 6 hospitals identified at the 99-percent confidence level and all but 1 of the 12 hospitals identified at the 95-percent confidence level were among the 43 hospitals already being reviewed because they had higher-than-expected mortality rates in the group/diagnosis categories. The one other hospital was added to VA's review.

APPENDIX III.—COMMENTS FROM THE  
DEPARTMENT OF VETERANS' AFFAIRS  
VETERANS' ADMINISTRATION,  
OFFICE OF THE ADMINISTRATOR OF  
VETERANS' AFFAIRS,  
Washington, DC.

Mr. LAWRENCE H. THOMPSON,  
Assistant Comptroller General, Human Re-  
sources Division, U.S. General Account-  
ing Office, Washington, DC.

DEAR Mr. THOMPSON: This responds to  
your request that the Department of Veter-  
ans Affairs (VA) review and comment on  
the General Accounting Office (GAO) April  
7, 1989, draft report "VA Health Care: Al-  
legations Concerning VA's Patient Mortality  
Study."

An October 1988 Washington Post article  
contained allegations that VA altered the  
design of its patient mortality study to  
obtain results more favorable to VA. GAO  
reviewed the allegations and found no evi-  
dence that the Chief Medical Director or  
any VA official acted inappropriately.

Enclosed are the comments of John A.  
Gronvall, M.D., Chief Medical Director, on  
the GAO report.

Sincerely yours,

EDWARD J. DERWINSKI,  
Secretary.

Enclosure.

COMMENTS OF THE CHIEF MEDICAL DIRECTOR,  
DEPARTMENT OF VETERANS AFFAIRS, ON THE  
APRIL 7, 1989, GENERAL ACCOUNTING  
OFFICE DRAFT REPORT "VA HEALTH CARE:  
ALLEGATIONS CONCERNING VA'S PATIENT  
MORTALITY STUDY"

When the VA patient mortality study was  
initiated, the Chief Medical Director intend-  
ed that VA hospital mortality be directly  
compared with the mortality experience of  
community hospitals. Because of differences  
between VA and Medicare records (as de-  
scribed in the GAO report), no such direct  
comparison could be made. Thus, the study  
does not allow any conclusion about quality  
of VA care compared to that of community  
hospitals.

Both the Health Care Financing Adminis-  
tration (HCFA) study and the VA study,  
therefore, compare individual hospital mor-  
tality data to aggregate data for the whole  
system of Medicare of VA hospitals respec-  
tively. The analysis then identifies individ-  
ual hospitals with higher (or lower) than ex-  
pected mortality. HCFA pointed out that no  
direct conclusion about quality of care can  
be drawn from such analyses. The VA study  
proceeded to actual case record reviews, as  
the GAO report describes, to see if there  
had been problems in the equality of care  
provided.

The Chief Medical Director has asked VA  
staff to use a study methodology identical  
to, or at least similar to, that of HCFA's. He  
thus assumed that when this statistical anal-  
ysis was applied to these two large systems  
(all Medicare hospitals, or all VA hospitals),  
approximately the same proportion of hos-  
pitals would be identified as "high outliers,"  
having higher than expected mortality  
rates. The GAO report documents that this  
was the Chief Medical Director's assump-  
tion, without giving his rationale for it.

In any event, as the GAO report points  
out, the Veterans Health Services and Re-  
search Administration had decided to do a  
followup medical record review in all hos-  
pitals where higher than expected mortality  
was found in any of the patient group/prim-  
ary diagnosis categories (a total of 43 hos-  
pitals).

In the interest of technical accuracy, we  
request that GAO make the following

changes in the report as well as the changes  
shown on the attached annotated extract of  
the report.

Page 2, Results in Brief: A sentence  
should be added, stating that both the 95  
and 99 percent confidence levels were used  
in calculating data. There is no mention of  
the 95 percent confidence level until later in  
the report. Since one of the allegations in  
the Washington Post was that the Chief Di-  
rector ordered a change in the confidence  
level used, it should be pointed out in the  
beginning of the report that both levels  
were in fact used, and that the analysis of  
the aggregate data at the 99 percent confi-  
dence level was conducted only to provide  
summary data. The analysis of data by pa-  
tient groups and diagnosis categories, con-  
ducted at the 95 percent level, was always to  
have been the basis for the case review—the  
purpose of the study. Excluding this infor-  
mation early in the report makes it appear  
as though an analysis was conducted only at  
the 99 percent confidence level. Persons  
who may only read the Results in Brief, not  
the entire report, would not have an accu-  
rate understanding of the calculations.

Page 7, line 1: Delete "only." The VA's  
data files record more than the patient's  
primary diagnosis.

Page 7: Footnote 4 should specify that the  
HCFA mortality rate was for the hospital's  
overall mortality rate.

Page 8: Last sentence, first, full para-  
graph: The meaning of the word "they" is  
unclear.

Page 9: The second-last sentence should  
read, "Three researchers within the VA  
\*\*\* using." Delete "The research specialist  
said that" because this is a factual state-  
ment.

Page 12, line 5: The followup studies were  
performed for a number of reasons, includ-  
ing identifying VA medical centers "where  
quality of patient care was less than optimal  
or where practices deviated from commonly  
accepted standards of medical prac-  
tice. \*\*\*" The followup review was limited  
to an assessment by physicians of the qual-  
ity of care provided in specific cases. There-  
fore, it would be inappropriate to state that  
the purpose of the followup was to "deter-  
mine whether these hospitals have quality-  
of-care problems."

APPENDIX IV.—MAJOR CONTRIBUTORS TO  
THIS REPORT

HUMAN RESOURCES DIVISION, WASHINGTON, DC  
David P. Baine, Director of Federal  
Health Care Delivery Issues, (202) 275-6207;  
James A. Carlan, Assistant Director; Robert  
E. Garbark, Assignment Manager; Carolyn  
L. Cook, Evaluator-in-Charge.

VA MORTALITY STUDY RESULTS

Mr. CRANSTON. Mr. President, I  
have just discussed GAO and OTA re-  
ports which exonerate Dr. Gronvall,  
VA's Chief Medical Director, from al-  
legations made about VA's fiscal year  
1986 mortality analysis. Yesterday,  
June 13, 1989, VA released its "Review  
of Mortality in VA Medical Centers,"  
the study which was the subject of  
these allegations. This report de-  
scribes the results of an indepth medi-  
cal record review at the 44 VA medical  
centers which VA's mortality statisti-  
cal analysis showed had higher-than-  
expected mortality rates. Because so  
few studies have been published in the

area of mortality, and no study is  
available to compare directly with this  
VA study, the VA report is difficult to  
interpret. I suspect, however, that  
there is no cause for major concern on  
the part of veterans and their families  
relying on the VA general medical and  
surgical hospitals.

According to this study, "likely"  
quality-of-care problems exist in 5.1  
percent of a sample of deaths reviewed  
within all Department of Veterans' Af-  
fairs [VA] medical centers during  
1986—3.7 percent have "likely" prob-  
lems if primarily medical and surgical  
facilities are reviewed, and a stagger-  
ing 10.4 percent have a "likely" prob-  
lem if only medical and surgical wards  
of primarily psychiatric VA medical  
centers are studied. I ask unanimous  
consent that the two tables from the  
VA report, which provide a clear sum-  
mary of the data in the study, be  
printed in the RECORD at this point:  
The first is entitled "Results of Medi-  
cal Record Review by Facility," and  
the second is entitled "Percentage of  
Cases Reviewed in which 'Likely'  
Quality of Care Problems Identified  
for 10 Primarily Psychiatric Facili-  
ties." These tables provide a clear  
summary of the data in the study.

There being no objection, the tables  
were ordered to be printed in the  
RECORD, as follows:

RESULTS OF MEDICAL RECORD REVIEW BY FACILITY

Facility	Number of cases	Likely quality of care problems	
		Number	Percent
Albany, NY.....	54	1	2
Alexandria, LA.....	21	0	0
Asheville, NC.....	15	2	13
Atlanta, GA.....	26	3	12
Battle Creek, MI.....	59	12	20
Biloxi, MS.....	30	0	0
Birmingham, AL.....	94	0	0
Buffalo, NY.....	80	0	0
Chillicothe, OH.....	12	2	17
Cincinnati, OH.....	8	0	0
Columbia, SC.....	36	1	3
Dayton, OH.....	101	6	6
Denver, CO.....	69	7	10
Des Moines, IA.....	13	0	0
Durham, NC.....	34	2	6
Fayetteville, NC.....	23	0	0
Houston, TX.....	106	10	9
Indianapolis, IN.....	13	0	0
Iowa City, IA.....	34	1	3
Leavenworth, KS.....	45	3	7
Lebanon, PA.....	14	0	0
Lexington, KY.....	15	0	0
Little Rock, AR.....	13	0	0
Loma Linda, CA.....	165	8	5
Marion, IN.....	72	5	7
Martinsburg, WV.....	11	0	0
Memphis, TN.....	19	0	0
Montgomery, AL.....	9	0	0
Mountain Home, TN.....	32	0	0
New Orleans, LA.....	91	1	1
North Chicago, IL.....	34	0	0
Oklahoma City, OK.....	15	0	0
Perry Point, MD.....	21	0	0
Phoenix, AZ.....	71	1	1
Pittsburgh, UD, PA.....	28	0	0
Salisbury, NC.....	79	11	14
St. Louis, MO.....	48	3	6
Tampa, FL.....	17	0	0
Tuscaloosa, AL.....	24	0	0
Tuskegee, AL.....	12	3	25
Waco, TX.....	39	5	13
Walla Walla, WA.....	11	1	9
Washington, DC.....	58	2	3
Total.....	1,771	90	

TABLE V.—PERCENTAGE OF CASES REVIEWED IN WHICH "LIKELY" QUALITY OF CARE PROBLEMS IDENTIFIED FOR 10 PRIMARILY PSYCHIATRIC FACILITIES<sup>1</sup>

Facility	Number of cases in review	Number of cases with quality of care problems	Percentage of cases reviewed with quality of care problems
Tuscaloosa	24	0	0
Battle Creek	59	12	20.3
Chillicothe	12	2	16.7
Lebanon	14	0	0
Marion (Ind)	72	5	6.9
Perry Point	21	0	0
Salisbury	79	11	13.9
Waco	39	5	12.8
North Chicago	34	0	0
Tuskegee	12	3	25.0
Total	366	38	10.4

<sup>1</sup> A case is regarded as having a "likely" quality of care problem if two peer reviewers indicated that the care was definitely or probably not consistent with current medical practice.

Mr. CRANSTON. Mr. President, although I am, of course, always concerned about the overall quality of care furnished in VA hospitals, I am particularly troubled in this case by the findings about mortality rates in VA psychiatric facilities and believe this to be indicative generally of an overall lack of attention paid by the VA to the problems of veterans with psychiatric diagnoses. I plan to pursue actively with VA its plans for corrective action at those facilities identified as having deficiencies.

I understand that resolving problems related to treating the medical or surgical illnesses of psychiatric patients is not easy. It is difficult to recruit and retain adequate numbers of high-quality medical and surgical practitioners at primarily psychiatric facilities, and it is frequently difficult to diagnose the medical or surgical illnesses of psychiatric patients because they sometimes describe their symptoms in ways which differ markedly from the descriptions of non-psychiatric patients. However, this does not mean that the 10.4-percent figure—which is almost three times as high as for VA general medical facilities—is not a cause for serious concern. It is indeed.

In its report, VA proposes to institute specific actions to resolve the "likely quality-of-care problems" that were identified. Today, in a committee hearing on related mental health matters, I pressed VA to expedite its followup actions—especially at the six psychiatric facilities identified—and VA's Chief Medical Director agreed to do so. Additionally, I am requesting the General Accounting Office [GAO] to initiate a review in order to determine if the methodology to be used for followup is appropriate, and then to follow VA's action to determine if the followup is completed as described, if the actions taken as a result of the followup are proper, and if GAO would recommend that other actions be taken.

Mr. President, I would also like to comment on a second, related matter.

In his letter to me accompanying the mortality study results, Secretary Derwinski stated that "In the narrative summary of this report, the authors issued this warning: 'No general statement about the quality of care within VA can be drawn from these findings'." This statement and other qualifiers led me to a conclusion that this specific effort did not represent a particularly effective use of VA resources." In other words, Mr. Derwinski seems to believe that VA wasted its time and money in conducting this study. I cannot agree with any such suggestion and believe the data developed in this study refute such a suggestion.

How else would VA have identified those facilities with "likely" problems in quality of care if this study had not been done? I am not aware of any other measurement in the current VA quality-assurance program that has produced comparable hospital-by-hospital aggregate data regarding any such deficiencies. Without regard to whether the results can be generalized—that is, extrapolated to apply to all VA facilities—these findings do imply something about the care given to specific patients in specific facilities—and especially so regarding medical and surgical care in VA psychiatric facilities. Additionally, although experts in the quality-assurance field assert that there are recognized limitations in using crude death rates as indicators of the quality of care furnished, they further suggest that these types of studies do assist to define where further investigation and possibly corrective action should be pursued.

Mr. President, that is exactly how VA had planned to use and should now proceed to use the study results.

#### NATURAL GAS WELLHEAD DECONTROL ACT

Mr. BIDEN. The Senate recently voted its approval for a bill that would have been impossible just a few years ago, the decontrol of natural gas prices. In my 16½ years in the Senate there are few issues that have proven to be as contentious, time after time, as the decontrol of natural gas.

This year we saw a breakthrough. In years past, I strongly opposed decontrol. Market conditions were all wrong and the decontrol proposals, in my view, would have subjected consumers to devastating and unwarranted price increases. While I supported incentives for increased drilling in the aftermath of the 1976-77 natural gas shortages, I was unwilling to go so far as to completely decontrol prices. As natural gas legislation was debated in later years, I tried to keep an open mind as to its merits.

The natural gas market has changed greatly since Congress last bogged

down on this issue. Over 60 percent of the natural gas moving interstate is not subject to price controls of any kind, and only 6 percent of interstate gas is restrained by legislatively mandated price caps. The risk of a fly-up in prices is not present in the debate on this bill.

Supporters and opponents of deregulation point to the same event in justifying their position, the expected end of the so-called gas bubble in the early 1990's. We are at a time of excess supply and looking ahead to one of tightened supplies. The decision Congress is making is how to best prepare for the future.

Some gain a certain comfort from price caps on natural gas prices and point to the worst conditions of the past as justification for the continuation of controls. But the limits of price caps become immaterial when the result is shortages as in the winter of 1976-77. So price caps can hurt consumers by discouraging drilling where gas may be most easily removed and encourage drilling in more difficult areas, and by making it harder for some companies to reinvest in additional wells. Consumer interests are not served by a regulatory scheme that hinders the future supply of natural gas, in effect making it more likely that price caps will be reached.

Deregulation is a good idea at this time. There is enough competition in the market to ensure that prices are not being fixed. The argument has been made that the potential exists for monopolistic behavior if production is concentrated in the control of a few big companies. But there was no evidence of that being certain, only that it is possible. It is a risk, but we must view it realistically or we will remain in a perpetual deadlock. There are other ways to address bad behavior of the type feared.

I voted against amendments that would only have reregulated the industry in one form or another or were merely punitive proposals. There are problems from the past that need to be resolved—take-or-pay, for example. But these are best handled on a case-by-case basis, not in the form proposed in amendment to this bill. If the only standard for supporting deregulation is that every problem must be addressed through legislation, we will again be locked to existing policy.

The rejection of Senator BRADLEY's amendment on open access is more problematic. Failure of that amendment, by a relatively narrow vote, led me to vote against final passage of the Senate bill. The Bradley amendment sought to assure that any outstanding questions about a potential future problem, access to natural gas transportation, is cleared up. This amendment addressed a part of deregulation that has been overshadowed by the at-

tention to wellhead prices, but has an integral role in the lowered consumer prices that made this whole bill possible.

Over a decade ago only a trickle of interstate gas was purchased directly from producers by consumers. Now over 70 percent of interstate gas is transported under open-access regulations. Just as wellhead decontrol seeks to allow individual producers greater freedom to make their own drilling decisions, open access is crucial to allowing purchasers to shop around for the best price. It will take on added importance as supply conditions change.

I opposed Senate passage in the hope of sending a message to the conferees that open access is an issue they should address. It is an important element to assure that the future benefits of deregulation flow through to the consumer, without sticking points such as pipeline retreat to earlier policies in which they refused to transport gas they had not purchased.

With that Mr. President, I hope to be able to support the conference agreement on natural gas deregulation when it comes to the Senate. Our Nation will be entering a new era with natural gas in the next few years. With deregulation comes certain risks, but I believe it is the best course to follow. However, I also hope that the bill that emerges from conference with the House will assure consumers that they will not be put at greater risk on the critical question of transportation.

#### EXECUTIVE SESSION

The PRESIDING OFFICER. The hour of 5 o'clock having arrived, under the previous order, the Senate will now go into executive session to consider the nomination of Richard R. Burt of Arizona, for the rank of Ambassador during his tenure as Head of the Delegation on Nuclear and Space Talks and Chief Negotiator on Strategic Arms. The clerk will report the nomination.

#### DEPARTMENT OF STATE

The legislative clerk read the nomination of Richard Reeves Burt, of Arizona, for the rank of Ambassador during his tenure of service as Head of Delegation on Nuclear and Space Talks and Chief Negotiator on Strategic Nuclear Arms.

The PRESIDING OFFICER. There will be 1 hour of debate equally divided between the chairman and ranking member of the Foreign Relations Committee.

The Senator from Rhode Island.

Mr. PELL. I thank the Chair. Mr. President, I support the nomination of Richard Reeves Burt to hold the rank of Ambassador during his tenure as Head of the Nuclear and Space Talks

and as Chief Negotiator on Strategic Nuclear Arms.

The Committee on Foreign Relations held a hearing on the Burt nomination on May 5. At that hearing, the committee explored thoroughly with him the administration's plans for the START effort, which, is successful, could be the centerpiece of a new era in arms control. In addition, the committee, somewhat concerned by official and unofficial evidence of administrative and security problems in earlier rounds of the START talks, questioned him closely as to how he will personally ensure that the highest standards for administration, cost control, and security are met by the delegation. In addition, the Senator from North Carolina raised a number of questions which were addressed by Ambassador Burt personally and which were covered in a report by the State Department's independent inspector general.

Mr. President, Ambassador Burt will bring to this position a thorough background in arms control issues. He was involved in arms control issues from the outset of the Reagan administration. He served from 1981 to 1983 as Director of the Bureau of Politico-Military Affairs in the Department of State. Mr. Burt was nominated by President Reagan, approved by the committee and confirmed by the Senate in 1983 to serve as Assistant Secretary of State for European and Canadian Affairs.

Two years later, Mr. Burt was nominated by President Reagan, approved by the committee and confirmed by the Senate as Ambassador to the Federal Republic of Germany. During that period, he dealt with a number of complex political, military, and economic issues.

Before entering Government service, Mr. Burt was the national security correspondent for the New York Times. Earlier, he served as research associate and assistant director of the International Institute for Strategic Studies in London. He is a graduate of Cornell University and received his master's degree from the Fletcher School of Law and Diplomacy at Tufts University.

The committee considered this nomination with care. Having done so, the committee overwhelmingly approved the nomination in a 16 to 2 vote.

Mr. President, the committee expressed its judgment on both the importance of the past and the appropriateness of the nomination in the concluding portion of its report, as follows:

Having reviewed the issues raised regarding Mr. Burt and his responses and having had access to the independent report of the State Department Inspector General, prior to reporting to the Senate, the Committee reached the conclusion that Mr. Burt is fully qualified to perform his duties effectively. The START Treaty now in prospect

is a critically important undertaking. Indeed, the eventful significance of the INF Treaty will hinge in great measure upon the success of the two sides in bringing about meaningful, stabilizing reductions in strategic offensive arms. Moreover, it will be essential for both sides to achieve an outcome in the Defense and Space Talks which allows the exploration of potentially valuable improvements in strategic defenses without undermining the Anti-Ballistic Missile Treaty, which is the centerpiece of prior efforts to control strategic arms.

Mr. Burt brings to these challenges a thorough background in strategic affairs, 8 years of high-level government service, and an apparent commitment to pursue the President's objectives in the Geneva talks. Accordingly, the Committee reaffirms its judgment that Mr. Burt should be confirmed.

I yield the floor.

Mr. McCAIN. Mr. President I speak in behalf of the nomination of Mr. Richard Burt to be our chief arms negotiator in Geneva. Mr. President, I do not have to tell any Member of this body how important the START process is to U.S. security, nor do I have to describe how crucial a time we are facing as the rapidly changing scenario indicates that there will be a degree of activity in Geneva, perhaps at a level that we have not seen before. At no time than the present do we need a more experienced, responsible professional in charge of the process.

Fortunately, the President has found such a man in Ambassador Richard Burt. Ambassador Burt's extensive experience as a national security expert outside of Government and his distinguished service over the past 8 years combine to make him uniquely qualified by training experience, and temperament as our chief strategic arms negotiators.

On issues of substance, Mr. President, he is sound. He understands that the purpose of arms control is to reduce the risk of war. He will bring back an agreement that will do that, and will not be rushed into unwise concessions. His thinking in this area is fully in accord with the views of this President and, I believe, the overwhelming majority of the Members of this body.

He is firmly committed to rejecting Soviet attempts to hold START hostage to United States concessions on SDI, and he will firmly protect our rights to develop such promising SDI concepts as brilliant pebbles. He fully understands the importance of Soviet compliance and has testified in support of the President's policy that we will conclude no new strategic arms agreement until the Soviets correct their Krasniak radar violations of the ABM Treaty.

Some raise questions over Ambassador Burt's commitment to ensuring proper security for classified material. These were dealt with extensively by both the inspector general of the De-

partment of State and the Foreign Relations Committee. I agree with the conclusions of both the inspector general and the overwhelming majority of that committee. Ambassador Burt is fully qualified and should be confirmed. Indeed, far from demonstrating lack of concern for security, Mr. Burt has shown exactly the opposite. As a reporter he declined to report news leaks for fear they might jeopardize U.S. security. As a senior Government official for 8 years, he was privy to some of the most sensitive secrets in Government. Yet, a searching examination reveals only minor, and I emphasize minor, administrative errors.

To ensure that serious allegations could not be swept under the rug, Congress established the post of State Department inspector general, mandating the independence of that office by statute. A searching investigation by the inspector general revealed no evidence of impropriety or lack of concern for security on the part of Ambassador Burt.

Ambassador Burt has testified in detail on the security procedures he will implement within his delegation if confirmed. The Foreign Relations Committee report, Mr. President, clearly indicates that Mr. Burt has been subject to thorough investigations prior to receiving his earlier Government nominations, as well as the negotiating post for which he has now been nominated. The investigations regarding Presidential appointments are now particularly comprehensive. All have been reviewed. There has been nothing discovered to bring into question Mr. Burt's loyalty or suitability for the high trust and confidence placed in him. From all indications, Mr. Burt was a valued member of the top-level teams to two Secretaries of State under President Reagan. He has received a vote of confidence from a new President and Secretary of State.

In sum, I am confident this is an excellent appointment. The President has made a wise choice. The Senate should act wisely to support that choice.

Mr. President, I have known Mr. Burt for some 12 years. I have known him to be a man of integrity, honor, and decency. Personal attacks sometimes not only harm the reputation of the individual that is being attacked, but also tend to dissuade other qualified men and women from public service. I think we should be very careful about the manner and the substance with which we question the qualifications of any candidate for office, whichever party is in power in the White House and does the nominating.

Mr. President, I happen to know Mr. Burt from personal experience. I believe he is well qualified. I believe he is a fine and decent man who is committed to the security of this Nation. I

have every confidence, along with President Bush, Secretary Baker, and all of the other members of this administration who were elected last November, that this choice is a wise one; one that will be of great value to the United States in the very difficult days of hard negotiating with the Soviet Union that lie ahead as we reach the goal which all of us seek: A meaningful, verifiable strategic arms reduction treaty to ensure not only our own future, but that of our children. Mr. President, those tasks and responsibilities are in good hands. I yield the floor.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER (Mr. KOHL). Senator HELMS.

Mr. HELMS. My understanding is that there is a 1-hour time limitation on this, equally divided; is that correct?

The PRESIDING OFFICER. Yes.

Mr. HELMS. I thank the Chair.

Mr. President, Richard Reeves Burt has been nominated to the position as head of the U.S. Delegation for the Nuclear and Space Talks and chief START negotiator. Needless to say, this position is one of supreme sensitivity dealing as it does with the highest and most sensitive of U.S. strategic defense strategy and capability.

Let me say parenthetically that Mr. Burt is a personable young man. During his career, he had been somewhat of a swinger, and I believe that was his own judgment.

I like him personally, but if my brother had had the record that Mr. Burt has with respect to a number of things which I will now identify, I would not vote to confirm my brother.

Unfortunately, Mr. Burt's career demonstrates that he has little sensitivity to the need to protect the security of highly classified information. He appears to act as though it is immaterial whether top secret and more highly classified information gets into the hands of the press.

It may be that his former career as a journalist has desensitized his concern for security laws, rules, and regulations. On the other hand, as a diplomat he has failed on over 100 occasions to provide classified information to the appropriate committees of Congress on a subject specifically mandated by law. These circumstances validly raise the question whether Mr. Burt ought to serve in any position which requires access to top secret and sensitive compartmented information which we identify by initials around this place as SCI.

Moreover, these circumstances raise a question of whether the personnel security system is functioning at a level adequate to protect our most sensitive secrets. Time after time security officials failed to follow established procedures. They lost files pertinent to Mr. Burt's activities. They neglect-

ed to send information of violations to a higher level, or they simply omitted to conduct investigations that should have been required by the circumstances.

Now, a report which I received after requesting it from the State Department Office of Inspector General was inconclusive, but it nonetheless confirmed the failure of the security system in many specific instances.

Although the actions in question were individually serious, the pattern of negligence and repeated violations raises serious doubts that Mr. Burt is fit to hold a security clearance. Moreover, Mr. Burt misinformed and misled the Foreign Relations Committee during questioning. Subsequently, he did correct one misleading statement but he left the others on the record.

Let me be specific about Mr. Burt's attitude toward security clearances as may be inferred from the following:

First, as a reporter for the New York Times, Mr. Burt published details of the CHALET satellite intelligence collecting system back in 1979. Now, although some legal experts believe it does not contravene the espionage laws to publicize classified information generally, the publication of information relating to communications intelligence collection is specifically punishable by law. This is not a question of an "Official Secrets Act" of the type based on pre-publication restraint. We are talking about penalties in the law for publishing information relating to communications intelligence. No question about that. In any case, it is absolutely clear that Mr. Burt condoned such disclosure and condoned the actions of whatever Government official or officials who provided him unlawfully with this highly secret information.

Second, in the period 1981-83, while holding an SCI clearance, Mr. Burt maintained what he described as a social relationship with a female journalist of the New York Times who began to publish classified information, to which Mr. Burt had access at the highest level in at least seven separate articles. Mr. Burt denies that he gave her classified information but his denial is uncorroborated. No investigation was held, and an investigation ought to have been held.

Third, while he was Ambassador to the Federal Republic of Germany, Mr. Burt gave a TV interview which indirectly disclosed our capability to intercept and analyze terrorist communications by Libya. Newspaper reports stated that he was reprimanded by the White House. As a result of the public discussion which followed Mr. Burt's interview, Libya changed its communications methods and the United States lost valuable intelligence access to terrorist communications. Press reports

confirm that Libya changed its communications to a more secure mode.

Fourth, Mr. Burt was intensely questioned about the espionage laws, particularly 18 U.S.C. 798 during his hearings back in 1982. Nevertheless, in 1989 he testified that he had never read section 798. The IG report shows that Mr. Burt has six times signed security nondisclosure agreements stating that section 798 and other such statutes were available to him to be read, and for briefing.

Now, Mr. President, it rather stretches the imagination that a nominee questioned about section 798 at a nomination hearing would not have read or been briefed on the statutes at least after the fact. In any case, he was clearly derelict in his duty if he declined to read them when the opportunity was made available on six occasions. Either he supplied incorrect information to a U.S. Senate committee, the Foreign Relations Committee, or he has zero interest in what his legal obligations are under the security statutes. He cannot have it both ways—one way or the other he has a culpability. Or both.

Fifth, Mr. Burt was cited for three separate security violations. And when questioned by the Foreign Relations Committee and this Senator—and I happen to be the ranking minority member of the Foreign Relations Committee—Mr. Burt could recall at that time only one security violation, and that was for leaving a low-level classified document unsecured, he said. But when asked if he had ever been cited for an incident involving a lost briefcase, Mr. Burt just could not remember. I remember his blank stare as he pondered the question.

Well, in point of fact, the inspector general's report shows that Mr. Burt was cited for losing a briefcase with top secret information; he lost it in Brussels while traveling with the Vice President. And what do you know? That briefcase containing that classified information was found, where? In the hands of a journalist with NBC.

Now, the briefcase was lost early in 1983 and on February 4, 1983, he was charged, in fact with losing the material; and on February 16, what do you know, he was confirmed by the Senate as Assistant Secretary for European Affairs. If the Senate had been aware of this violation, perhaps his confirmation would have had a different outcome. Clearly this major top secret violation, coming as it did, right before confirmation to an important post, made little or no impression on him. And if so, what does that tell us about him? His total lack of memory, even when prompted—and I prompted him several times during my interrogation of him—this lack of memory, if that is what it is, itself demonstrates a lack of concern for security.

Sixth, when Mr. Burt was Ambassador to Germany, according to the IG report, security personnel found a 35-millimeter film cartridge containing marijuana. They found it in Mr. Burt's residence in Bonn. Although no evidence was found that Mr. Burt used marijuana—and I do not accuse him in that regard—what was Mr. Burt's explanation? He said, "Oh well, a guest must have left this marijuana."

He had just forgotten to report it to the authorities. But there was no corroboration of his assertion. The authorities accepted his self-serving statement. In any case, the incident demonstrates his continued lack of concern for security.

With these examples in mind, it is astonishing that the security system failed even to consider them adequately because a number of irregularities appeared.

First, in 1981, Mr. Burt was given SCI clearance while the Attorney General still had an open investigation on the CHALET disclosure;

Second, the FBI never asked Mr. Burt for the name of his source in the CHALET case, nor did Mr. Burt disclose the name voluntarily;

Third, Mr. Burt was never questioned about his relationship with the female New York Times reporter after she began to publish again and again and again classified information to which he has subsequently admitted that he had access. No reference to the relationship with the journalist even appears in his security file;

Fourth, the top secret violation involving the lost briefcase. What do you know, Mr. President? It was totally left out of his security evaluation summary;

Fifth, the IG report states that the regional security officer concluded that the contents had not been compromised even though it had been in the hands of the NBC reporter for an extended time, based once again on Mr. Burt's uncorroborated assertion; and

Sixth, no records were kept on the marijuana incident, and it never became a part of the security file.

One can only imagine what would have happened if these events had occurred to somebody else. I suppose that anybody who has ever been accused by the authorities of having illegal substances in their home have always said, "Oh, somebody left it there. I had nothing to do with it." But the IG report stated that the investigation of the marijuana incident—this is the IG's assessment, not mine—and the inspector general said the investigation was conducted "in a manner inconsistent with professional investigative methodology."

Mr. President, even though I personally enjoyed the company of Mr. Burt on a few occasions when I have seen him, and I hold no personal animosity

against him, I cannot vote to confirm a man with this record. I know what the arithmetic on voting in the Senate is, and he has many personal friends in the Senate and has taken care to cultivate them. That is fine. Some may get up today and say he is the greatest thing since sliced bread. But that seems to be somewhat of a derogation of sliced bread.

Mr. HELMS. Mr. President, I ask unanimous consent that certain additional material be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### INTRODUCTION

Newspaper accounts report that, in recent years, the U.S. START Delegation in Geneva has not always observed the highest standards of security and decorum. The reports indicate careless security procedures, the loss of quantities of highly classified data, and imprudent personnel involvement in social activities with foreign nationals, associations which may well have jeopardized the nation's security. Needless to say, penetration of the U.S. START delegation is a high priority of the Soviet KGB.

When Mr. Burt appeared before the Committee on May 5, 1989 he had a prepared statement ready to address this problem, in which he said:

"Many members of the Senate are quite concerned about reports which we have received concerning lax security controls over the delegation in Geneva and a number of possible serious violations and penetrations of our national security.

"As head of our delegation in Geneva, I will work to strengthen our security practices there."

"In cooperation with the ACDA Director and with the State Department Bureau of Diplomatic Security, I plan to take the following additional measures.

"First, every member of the U.S. Negotiating Team in Geneva, regardless of which agency they represent, will be required by me to attend a briefing on security and counter intelligence measures before they will be allowed to travel to Geneva. This briefing will be provided jointly by ACDA and the State Department's Bureau of Diplomatic Security.

"Secondly, all delegation members will be provided with a written delegation security directive, which will outline, in considerable detail, the security responsibilities of each delegation. The guidelines in this directive will cover physical security, document handling, and personal conduct.

"All delegation members will be asked to sign a statement saying that they have read these guidelines and they will be encouraged to keep them for reference.

Thirdly, tighter security controls will be promulgated for all sensitive delegation documents, with strict limits on the number of copies made and the distribution of these documents. . . .

"Fifthly, I, personally, will ensure that all violations of security are addressed with tough disciplinary action, including, if necessary, dismissal of repeat offenders from the delegations.

This is an admirable statement of commonsense security procedures, and I applaud Mr. Burt for going on public record as to his intentions in Geneva, if confirmed. Unfortunately, Mr. Burt's declaration lacks credibility, based upon his own past conduct.

The handling of classified data is governed both by statute and by agency guidelines, principally those of the CIA which processes requests for access to so-called SCI, that is, Sensitive Compartmented Information. The statutes, specifically 18 USC 793, 794, 798, and 952, commonly called the Espionage Laws, were designed to prevent anyone—civilian, government, or military, citizen or alien—from transferring to the enemy information which is essential to the national defense. The SCI guidelines provide the investigative criteria for determining whether a person should have access to sensitive materials. The guidelines are found in DC—Directive 1/14, promulgated by George Bush in 1976 when he served as Director of Central Intelligence.

It is not the business of the Committee or the Senate to determine whether laws have been broken or whether an individual should have access to SCI materials. Nevertheless, in reviewing a nominee's fitness to hold an office which requires such access, it is proper to assess the nominee's attitude towards the protection of sensitive data when his past activities indicate irresponsible and imprudent behavior that have damaged our national security.

#### I. MR. BURT'S PARTICIPATION IN DISCLOSURE OF INTELLIGENCE DATA

18 USC 798 applies heavy fines and imprisonment against any person who knowingly and willfully communicates, furnishes, transmits . . . or publishes any classified information concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used by the United States . . . for cryptographic or communication intelligence purposes. [18 USC 798 is attached as Exhibit I.] Unlike other espionage statutes, Section 798 requires only that the furnishing or publishing be done knowingly and willfully, and does not require an additional intent to harm the United States. It is also distinguished from Sections 793 and 794 in that it specifically prohibits publishing which the others do not. In 1979, Mr. Burt, then a reporter on national security affairs for The New York Times, received from an unknown source and published in his newspaper details of the design, construction, and use of the then secret CHALET intelligence communications satellite. [This article is attached as Exhibit II.] Clearly, the intent of Section 798 was to make such an action a crime, both on the part of the person who furnished the information and on the part of the person who published it.

The Senate Select Committee on Intelligence did an assessment of the damage which Mr. Burt caused by his article and concluded that the information he disclosed fit the literal definition of "top secret"—that is, information the release of which could be expected to do exceptionally grave damage to national security. But according to the State Department Inspector General report of June 6, 1989, "Mr. Burt said that the FBI never asked him for the source of the 1979 article."

It is not the purpose of this Senator to argue that Mr. Burt should have been prosecuted. The point is that this is a well-documented case which shows that Mr. Burt cooperated with, and thereby approved, the

disclosure of intelligence information that was prejudicial to the interests of the United States. Some have argued, under an absolutist vision of the First Amendment, that the press can publish any defense secret, no matter how vital; but that surely does not apply to Mr. Burt's informant. The information was supplied by an unknown government employee and the argument for First Amendment rights cannot apply to a government employee who has signed a secrecy agreement as a condition of access to SCI material.

In the aftermath of Mr. Burt's publication of information concerning this source of communications intelligence, a number of foreign governments, in order to protect their own sources, took steps to deny U.S. access to such data relevant to U.S. verification of arms control treaties.

Mr. Burt failed to repudiate the action of the government employee who originally disclosed the information which he published. For this reason, it is difficult to understand why he himself was given access to SCI material when he entered government in 1981 if he believed that any government employee had the right to decide to give such information to the press at any time.

#### II. MR. BURT'S RELATIONSHIP WITH A JOURNALIST DISCLOSING CLASSIFIED DATA

The Minimum Personnel Security Standards and Procedures governing eligibility for access to Sensitive Classified Information are set forth in an unclassified directive known as DCID 1/14. [This document is attached as Exhibit III.] These provisions apply to all persons other than elected officials, federal judges, and individuals for who there is a special exception, without regard to civilian or military status, form of employment, official rank or position, or length of service. Those who do not meet the minimum security criteria are to be denied access to SCI.

The process of deciding whether or not access should be given is determined by reference to eleven criteria for adjudication. These include a) loyalty; b) close relatives and associates; c) sexual considerations; d) cohabitation; e) undesirable character traits; f) financial irresponsibility; g) alcohol abuse; h) illegal drugs and drug abuse; i) emotional and mental disorders; j) record of law violations; and k) security violations.

#### Annex A to DCID 1/14 states:

"The adjudicative process entails the examination of a sufficient period of a person's life to make a determination that the person is not now or is not likely to become an acceptable security risk later. SCI access adjudication is the careful weighing of a number of variables known as the 'whole person' concept. The recency of occurrence of any adverse incident, together with circumstances pertaining thereto, is central to a fair and uniform evaluation. Key factors to be considered in adjudication are the maturity and responsibility of the person at the time certain acts or violations were committed as well as any repetition or continuation of such conduct . . . Any doubt concerning personnel having access to SCI shall be resolved in favor of the national security."

Thus, having been involved in a major disclosure of security information in 1979—one that involved wide investigations and re-evaluation in the intelligence community—Mr. Burt was on record when he sought SCI access in 1981 as having covered up and condoned such disclosure on the part of his unknown accomplice, not to speak of his own position that he, as a journalist, had the

right to determine whether to publish classified information about communications intelligence sources and methods. It is difficult to understand why he would have been granted such access.

Nor is access, once granted, permanent. DCID 1/14 states "reinvestigations shall be conducted . . . on a more frequent basis where the individual has shown some questionable behavioral pattern, his or her activities are otherwise suspect, or where deemed necessary by the [Senior Officer In Charge]."

During the period 1981-83, while Mr. Burt was Director, Military-Political Affairs, and Assistant Secretary for Europe, he conducted an on-going association, which he testified was "a social relationship" with Ms. Judith Miller, a reporter on national security affairs for The New York Times. During this period, Ms. Miller published some 30 articles dealing with topics in the general area of Mr. Burt's duties. At least seven of these articles appeared to contain classified material relating to data or deliberations to which Mr. Burt had access. [The seven articles are attached as Exhibit IV.]

While the general prudence of such an on-going relationship with a news reporter may be questioned, the far more serious question is why it was continued once Ms. Miller began to publish classified information. Once that happened, the relationship became a matter for readjudication of Mr. Burt's access to SCI, according to the established criteria.

The mere coincidence of Mr. Burt's relationship with Ms. Miller during the period during which she published classified information to which he had access does not, of course, establish that Ms. Miller obtained the information directly or indirectly from Mr. Burt. Mr. Burt denied in testimony that he furnished classified information to her. But his unsupported denial lacks credibility in view of the fact that he had previously condoned a government employee transferring highly classified information to The New York Times. And even if he did not furnish her with classified information, the continuing of such a relationship under the circumstances gave the appearance of condoning the breach of the fiduciary duty of other government employees to safeguard national security information.

Mr. Burt testified that he was never questioned about the Miller articles containing classified information to which he had access. Yet DCID 1/14 clearly requires a readjudication of access to SCI when the subject is involved in a situation which might lead to pressure to supply illegally classified information:

"Sharing living quarters with a person or persons, regardless of their citizenship status may be indicative of a close relationship, whether or not it is considered intimate. The potential for adverse influence or duress should be considered in any close or long-term relationship between the subject and another individual."

"The adjudicator must assess carefully the degree of actual and potential influence that such persons may exercise on the individual based on an examination of the frequency and nature of personal contact and correspondence with and the political sophistication and general maturity of the individual."

"DCID 1/14 requires that, to be eligible for SCI access, individuals must be stable, of excellent character and discretion, and not

subject to undue influence or duress through exploitable personal conduct.

"Sexual promiscuity and extramarital relations are of legitimate concern to the SCI adjudicator where such conduct reflects a lack of judgment and discretion, or when the conduct offers the potential for undue influence. . . .

"In all cases, the individual's spouse or cohabitant shall at a minimum be checked through the subversive and criminal files of the Federal Bureau of Investigation and other national agencies as appropriate. When conditions indicate, additional investigation shall be conducted on the spouse of the individual and members of the immediate family (or other persons to whom the individual is bound by affection or obligation) to the extent necessary to permit a determination by the adjudicating agency that the provisions of paragraph 5 [e.g. The individual shall be stable; trustworthy; reliable; of excellent character, judgment, and discretion.] above are met."

Some of these guidelines may or may not apply to Mr. Burt. Nevertheless, they illustrate the kinds of considerations of risk that adjudicators must bear in mind as they consider a case. Indeed, the guidelines, in a parallel situation, state that an applicant must file a statement of intent if he or she intends to marry a foreign national—in which case security access is denied until there is a full field investigation of the other party.

According to the Inspector General's report, Mr. Burt denied cohabitation, but interviews conducted by the IG with 18 people in 1989 "also disclosed that Mr. Burt was believed to have cohabited with Ms. Miller after separation from his previous wife and before remarriage in 1985." Despite the circumstantial evidence suggesting that security may have been compromised, no special inquiry was made on the grounds that she was not a foreign national. It is not Mr. Burt's relationship, per se, that is in question, but the issue of compromising security information. It is plain, therefore, that an extensive social relationship with a journalist publishing classified data constitutes a legitimate cause for concern of a security risk. The apparent failure by both Mr. Burt and security officials to consider the security risk involved is an amazing collapse of security policy.

### III. MR. BURT'S DENIAL THAT HE LEAKED INFORMATION

Mr. Burt testified on May 5 that he never leaked any classified information. In the course of a lengthy exchange, I asked the following:

"But what you are saying to me is just on occasion you may have escorted her to a dinner party and you never, never discussed any official business with her—never. Is that right?"

"Ambassador BURT. That is correct."

Shortly after that exchange, I was visited by a former high official of government who alleged that he was present at a social occasion with Mr. Burt and Ms. Miller when Ms. Miller began discussing some highly classified information. According to this witness, when Mr. Burt realized that he was being compromised by this discussion in the presence of a third party, he became very angry and acted in a irresponsible manner. I have asked the State Department Inspector General to investigate this matter. No response was made on the issue.

### IV. MR. BURT'S DISCLOSURE OF THE LIBYAN INTERCEPTS

Mr. Burt was Ambassador to the Federal Republic of Germany, he gave an interview on West German television after the bombing of the U.S. soldiers in the La Belle Disco in Berlin. In the course of this interview, he pointed the finger at Libya, making indirect references to U.S. ability to intercept and analyze Libyan coded communications pertaining to terrorism. This reference, and the consequent publicity did severe damage to U.S. sources and methods, and caused great consternation among members of the U.S. intelligence community. In order to protect the secret of our ability to intercept Libyan messages, even the lives of agents in place had been previously put at risk. Libya, alerted for the first time to the fact that we could decipher her codes, immediately changed equipment and procedures. According to The Philadelphia Inquirer, the government of Libya thereafter purchased and installed sophisticated Swiss cryptographic equipment to protect international communications from foreign interception.

As a result, our ability to obtain foreknowledge of terrorist bombing plans was severely restricted.

The Washington Post reported that Mr. Burt had been "reprimanded." In defense of Mr. Burt, some have held that President Reagan himself confirmed the details of the intercept a few days later. But by that time, the operation had been blown so completely by Mr. Burt that it was no longer a secret matter. Moreover, the President has the power to declassify any information he wishes to use; Mr. Burt did not have that authority.

The seriousness of the breach of security may be evaluated by the previous reference to 18 USC 798. In addition to the criminalization of disclosing classified information about cryptographic and communications devices, it also safeguards classified information.

(3) the communication intelligence activities of the United States or any foreign government; or

(4) obtained by the processes of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes. . . .

Although Mr. Burt's revelation of knowledge obtained from deciphering Libyan intercepts may or may not have been advertent, it was certainly a most serious matter. It must be judged in the light of his continuing pattern of indifference to prudent protection of sources and methods.

The State Department Inspector General and the Director of Central Intelligence and the Director of the National Security Agency were all asked about this episode. The Inspector General stated that he was unable to contact Lt. General Odom, the former Director of NSA. The CIA and NSA did not respond to my letters requesting information on this subject. [The letters are attached as Exhibit V.]

### V. MR. BURT'S KNOWLEDGE OF SECURITY PROCEDURES

Although Mr. Burt testified that, if confirmed, he would institute stringent security procedures for the START delegation to Geneva, including mandatory briefings, written directives on security procedures, signed acknowledgments of having read the guidelines, and tough disciplinary action, including firing for repeat offenders, he also testified that he, himself, was unfamiliar with the espionage laws. I stated:

"In retrospect, do you feel that the person who gave you the information [about the top-secret CHALET satellite] was in violation of the espionage laws?"

"Ambassador BURT. In retrospect?"

"Senator HELMS. Yes."

"Ambassador BURT. Senator, I am not a lawyer. I have not looked at or studied, and you have just read this passage. I am not able to make an informed decision on that."

"Senator HELMS. Well, you have had a long time to think about it, because we sat up there on the third floor of the Capitol [in 1982], and then you gave testimony. You have had a while to think about this."

"But let me ask you this."

"Do you think that the furnishing and publication of classified material is in violation of the espionage laws under 18 USC 798?"

"Ambassador BURT. I can't say. I just don't know the legal issues."

"Senator HELMS. All this time and you've never even thought about it. Right, Ambassador Burt? Well, I've never consulted with a lawyer on this issue. It did come up in my Senate confirmation extensively in 1982. I know it was discussed in this Committee. It was discussed in the Intelligence Committee. I was voted out of Committee and confirmed."

"Since that time, I have not followed up to examine the legal issues that you have raised today."

"Ambassador BURT. I am just not an expert on these espionage laws, so I—"

"Senator HELMS. I don't ask you to be an expert. Do you have any feeling about it?"

"Ambassador BURT. No. I don't know enough about the laws to—"

"Senator HELMS. Oh, come on, Mr. Burt. I know this is a ticklish subject for you."

"Ambassador BURT. Senator, I have never read those laws, so I can't—you're asking me to say whether somebody has violated a law that I have never read. I'm not a lawyer."

Of course, everyone who receives a clearance for SCI must go through the exact same procedures as Mr. Burt proposes for the members of his START delegation, including a signed acknowledgment that the subject has been briefed on the espionage laws. Either Mr. Burt was not briefed, has forgotten that he was briefed, is being less than candid, or displays little interest in finding out what his obligations are under the espionage laws.

The fact is that every applicant for SCI must sign the following statement:

"I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction. I acknowledge that the briefing officer has made available Sections 793, 794, 798, and 952 of Title 18, United States Code, and Executive Order 12065, as amended, so that I may read them at this time, if I so choose."

If Mr. Burt did not sign such a statement, why didn't he? If he did sign, did he read Sections 793, 794, 798 and 952 of Title 18, USC as made available to him? If he did not read them, why not? If he did read them, then did he mislead the committee when he testified that did not? Would it not be fair to conclude, then, that he furnished false information to the Congress? If Mr. Burt did not read the statutes, he is derelict in his duty; if he did read them, he is attempting to deceive the Committee. Whatever the answers to these questions, they must form part of Mr. Burt's continuing pattern of indifference to security procedures.

The State Department Inspector General has established that Mr. Burt signed six Se-

curity Nondisclosure Agreements containing the above language. These agreements are dated: January 29, 1981; March 2, 1981; July 21, 1982; April 25, 1985; September 6, 1985; and April 11, 1989.

#### VI. THE RELEVANCE OF MR. BURT'S LIFESTYLE

This indifference to prudent security procedures appears also to pertain to Mr. Burt's lifestyle. During the May 5 hearing, Mr. Burt was asked about reported instances of security reprimands for carelessness. By themselves, such instances may not be of overwhelming importance; but as part of the general picture, they increase the danger of a security risk. Mr. Burt admitted to one instance of leaving classified papers on a desk. He was asked about another purported case of a lost briefcase, but could not remember.

The Inspector General reported that Mr. Burt received the following three violations:

1. A top secret violation on February 4, 1983, regarding the briefcase incident noted above;

2. A confidential violation, dated May 6, 1986, for improper storage of classified information;

3. A secret violation, dated May 15, 1987, for improper storage of classified information.

Subsequently, on June 8, Assistant Secretary of State Janet G. Mullins wrote stating that Mr. Burt wished to "clarify the record of the hearing." I have already commented on the nature of the violation reported in the clarification. (The letter from Ms. Mullins, with Mr. Burt's statement appears as Exhibit VI.)

The IG report also reveals that marijuana was found by security personnel in Mr. Burt's residence in Bonn in January, 1986. When Mr. Burt was asked about this discovery, he stated that the drug was left behind by a guest. But Mr. Burt stated that he found the drug, but did not initially report it. Although no evidence of the use of illicit substances was found, Mr. Burt's explanation of the origin is uncorroborated. (An unclassified letter from the Inspector General is attached as Exhibit VII.)

#### VII. MR. BURT'S FAILURE TO REPORT AS REQUIRED BY LAW

Mr. President, while Mr. Burt's career suggests that he cares little for security precautions when dealing with the press, his record with regard to keeping classified information from Congress is untarnished. Although the Federal Republic of Germany was secretly warned over 100 times about lax procedures leading to prohibited arms proliferation—with no response from Germany—Mr. Burt neglected to inform Congress about his failure to get the German government to respond adequately.

During his hearing, Mr. Burt was questioned extensively about a published report that during the time he was Ambassador to the Federal Republic of Germany (FRG), the United States Government presented the FRG Government with over 100 complaints, known as "demarches," regarding FRG-based company exports of nuclear materials and equipment to Pakistan. According to the published report, the demarches ended up in the "wastebaskets" of responsible FRG officials. There seems to be no indication of a positive response to these demarches by the FRG Government nor does it appear that Mr. Burt took notice of the lack of response.

Section 602(c) of the Nuclear Non-Proliferation Act of 1978 requires the Department of State to "keep the Committees on For-

eign Relations and Governmental Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives fully and currently informed with respect to (its) activities to carry out the purposes and policies of this Act and to otherwise prevent proliferation, and with respect to the current activities of foreign nations which are of significance from the proliferation standpoint."

In a written question, Mr. Burt was asked, "With regard to nuclear proliferation, please provide an opinion of counsel explaining why Congress was not notified [about the 100 demarches] as required under Section 602(c) of the Nuclear Non-Proliferation Act of 1978." Mr. Burt replied, "The Department has discharged this responsibility by offering regular briefings to the three committees on topics and developments of current concern in the field of nuclear proliferation." Mr. Burt's answer further states that these briefings covered "U.S. diplomatic efforts to have this [nuclear] procurement stopped."

On May 18, 1989, Senator John Glenn, Chairman of the Senate Governmental Affairs Committee, raised the issue of the 100 demarches with Undersecretary of State Bartholomew. Senator Glenn stated, "I certainly do not recall any number of demarches coming through that we have been informed at this end of the avenue [if] anything approaching 100 demarches just to one country, let alone all the other countries involved. So if we are to be kept fully and currently informed, let me just state here we have not been and we expect to be . . ."

The Minority staff of the Senate Foreign Relations Committee has made an extensive search of its files and records and can likewise find no record of any effort by Mr. Burt or the Department of State to inform the Committee of FRG nuclear exports to Pakistan as required by law.

Extensive Congressional testimony over a number of years has made it abundantly clear that during the 1980's, and probably before, FRG-based firms were the prime source of improper strategic exports to the Warsaw pact, as well as chemical/biological weapons equipment and missile technology to the Middle East, and finally, nuclear exports to India and Pakistan. As noted above, published reports suggest that the United States officially complained over 100 times about improper German exports to Pakistan alone. Counting complaints about all improper exports undoubtedly run into the hundreds. During the majority of this period, Mr. Burt has been one of the prime U.S. officials charged with diplomatic relations with the FRG, first as Assistant Secretary of State for European Affairs and later as Ambassador to the FRG.

The fact that Mr. Burt never took these improper exports seriously nor informed the Congress of the failure of the FRG Government to respond to our complaints raises serious doubts about his fitness for the position to which he has been nominated. Our chief nuclear arms negotiator will not be successful if his negotiating opponent knows that American officials will neither challenge him nor report intransigence to the Congress.

An Ambassador appointed by the President with the advice and consent of the Senate represents the President of the United States, who, in turn, has a duty to execute faithfully the laws of the United States. Does the record of Mr. Burt's conduct indicate a fidelity to the duty to pro-

tect communications intelligence of the United States? Does the record of Mr. Burt's denials of disclosure of classified information, and denials of even reading the statutes protecting intelligence information reflect truthfulness before the Foreign Relations Committee?

Until these matters are more satisfactorily explained and resolved, I must advise Members of the Senate to withhold the advice and consent to the appointment of Richard Reeves Burt to serve as Ambassador during his tenure as Head of the U.S. Arms Control delegation in Geneva.

#### EXHIBIT I—18 U.S.C. 798

##### § 798. Disclosure of classified information

(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or

(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or

(3) concerning the communication intelligence activities of the United States or any foreign government; or

(4) obtained by the processes of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(b) As used in subsection (a) of this section—

The term "classified information" means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution;

The terms "code," "cipher," and "cryptographic system" include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term "foreign government" includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term "communication intelligence" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this sec-

tion, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.

(Added Oct. 31, 1951, ch 665, § 24(a), 65 Stat. 719.)

#### EXHIBIT II

##### U.S. PLANS NEW WAY TO CHECK SOVIET MISSILE TESTS

(By Richard Burt)

WASHINGTON, June 24.—The Carter Administration, concerned that Turkey might not allow U-3 reconnaissance planes over its territory, is preparing an alternative plan for verifying the new strategic arms treaty with Moscow, officials here said today.

The plan, they said, calls for several improvements in existing methods for monitoring Soviet missile tests, including the upgrading of an electronic listening post in Norway and the use of a satellite that is now programmed to collect other information.

Although the officials acknowledged that the use of specially designed U-2R planes flying over Turkey offered the best substitute for listening stations lost to Iran early this year, they asserted that the alternative improvements to other intelligence systems would enable the Administration to insure that Moscow did not exceed restrictions on missile modernization contained in the arms treaty.

#### A NEW SATELLITE BY 1963

They said that as early as 1963, the United States would possess a new satellite that could monitor almost all the missile test data formerly obtained by the monitoring sites in Iran.

State Department officials pointed to a statement yesterday by the Turkish Foreign Ministry indicating the U-2 might still be permitted to fly over the country. Although a ranking Turkish Army officer said earlier this week that the flights could not be permitted "under present circumstances," a Foreign Ministry spokesman said the Government had not reached a final decision.

Despite this, critics of the arms accord on Capitol Hill maintained that, with or without the surveillance flights, the United States could not verify restrictions against increases in size and payload of existing missiles.

#### BIG SOVIET EXPLOSION DETECTED

The verification controversy heated up this week with reports that the Soviet Union conducted an underground nuclear test last Saturday that might have exceeded limits laid down in an accord Moscow signed in 1974 with Washington.

The accord put a ceiling of 150 kilotons on the size of such nuclear explosions. Some American experts believe that the latest Soviet test might have been twice that size. One kiloton is equivalent to 1,000 tons of TNT.

Although it is unclear whether the Soviet test exceeded the 150 kiloton limit, officials said the Administration has asked Moscow to explain the possible infraction.

Meanwhile, officials said that plans were under way at the Central Intelligence

Agency and in the Pentagon to collect missile test data previously obtained by the stations in Iran by using a satellite, code-named Chalet, and a large radio intercept antenna in Norway.

#### SIGNALS CAN BE INTERCEPTED

They said both the satellite and the ground station in Norway could be adjusted to pick up some of the radio signals broadcast by Soviet missiles during flight tests. The telemetry signals provide data on missile performance characteristics and are thus considered vital to verifying the treaty provisions concerning modernization of weapons.

Earlier, officials said, the possibility of building a monitoring station in Pakistan similar to those lost in Iran, had been considered by the Administration. The proposal was turned down after informal contacts with Pakistani authorities indicated that it would not be accepted.

A proposal for using high-altitude rockets launched from ships in the Indian Ocean to monitor missile test signals was also dismissed as technically unfeasible, they said.

#### CRITICS SEE HOLES IN DETECTION

Congressional critics of the proposal to rely on the Norwegian station and satellites for verification contended that these systems would only be able to pick up a small fraction of the missile telemetry obtained previously at the Iranian sites. They said that a major function of the Iran stations had been to collect missile data transmitted during the first 60 seconds of a test launch and that this data could not be collected from Norway or from existing systems in space.

Pentagon officials said that for Moscow to build a new missile undetected, it would have to shield 20 or so test launches from American surveillance systems for more than a year. They contended that modest improvements to existing reconnaissance capabilities ruled out the possibility of a large scale covert program of this sort.

#### EXHIBIT III

[From the New York Times, July 20, 1982]

##### U.S. SAID TO DECIDE AGAINST NEW TALKS TO BAN ALL A-TESTS (By Judith Miller)

WASHINGTON, July 19.—President Reagan decided today not to resume negotiations on a comprehensive ban on nuclear testing, according to Administration and Congressional officials.

The talks with Britain and the Soviet Union that were aimed at ending underground tests on less than 150 kilotons—the only testing now permissible under previously negotiated treaties—have been suspended since 1980.

The decision not to try to make the test ban a total one was reportedly made today at a National Security Council meeting, and, according to the officials, it was made because of the doubts of some members of the Administration about the verifiability of a comprehensive ban and because of the need to keep testing new nuclear weapons.

The White House declined to comment on the meeting today.

#### THE SPREAD OF NUCLEAR ARMS

The decision not to resume negotiations on a total test ban has no bearing on the talks in Geneva between the Soviet Union and the United States to reduce strategic and intermediate-range nuclear weapons, according to Administration officials. Nor does it reverse the nation's previous commitment to refrain from nuclear testing above

ground in accordance with a treaty signed in 1963, they said.

Officials said the Administration was not ruling out the goal of a total nuclear ban at some other time but stressed that, at present, it did not seem to be in the best interests of the United States.

Arms control advocates have long maintained that a comprehensive test ban is central to preventing the spread of nuclear weapons. They argue that, unless the superpowers are at least prepared to ban their nuclear testing programs, there is little incentive for other countries to give up atomic development programs.

#### CONCERN OVER ADVERSE REACTION

The decision not to resume the test ban talks seems in accord with other Reagan Administration actions of recent months that take a hard line toward the Soviet Union. The Administration apparently wanted to keep its decision secret because it was afraid of adverse reaction in the Soviet Union and among American allies and developing countries.

Every Administration since that of John F. Kennedy has voiced a commitment to negotiating a comprehensive test ban. And few outside of Government even knew that a policy debate was scheduled, although a review of nuclear testing policy had been going on for almost a year and a half. Officials declined to say why the issue was discussed and decided at this time.

At the National Security Council meeting, Mr. Reagan also reportedly discussed whether to continue to observe the underground testing limitations of less than 150 kilotons that are contained in two previously negotiated treaties. Officials said that representatives of the Departments of Energy and Defense had urged Mr. Reagan to press the Soviet Union for negotiations to strengthen verification measures provided for in the two treaties, but there were varying accounts of what course the President chose.

It was not clear whether the United States would continue to participate in the United Nations Committee on Disarmament, a 40-nation group that is also negotiating on a test ban. The tripartite talks are separate, but are related to the United Nations effort.

Nuclear tests above ground, under water and in outer space were barred in 1963 in an agreement signed by the United States, the Soviet Union and Britain and later by 120 other countries.

In 1974, the United States and the Soviet Union agreed on a Threshold Test Ban Treaty, which limited all underground nuclear tests to 150 kilotons or about 10 times the explosive power of the bomb dropped on Hiroshima. A subsequent treaty, the Peaceful Nuclear, was signed in 1976. This accord banned nuclear explosions greater than 150 kilotons for "peaceful purposes," such as mining or excavations. Although both nations claim to have abided by the limitations since then, the Senate has not approved either treaty.

The tripartite negotiations on a comprehensive ban have been under way since 1977, and former Carter Administration officials said that considerable progress was made toward an agreement to ban all testing of nuclear weapons during the 12 negotiating sessions in Geneva. But in November 1980, the negotiations recessed with the United States and the Soviet Union still divided over provisions concerning how compliance with the ban would be verified.

Later that year, President Carter postponed a final effort to negotiate a comprehensive test ban until the second strategic arms limitation agreement being negotiated with the Soviet Union was concluded, partly because of disagreement among his advisers over the merits of a comprehensive treaty. Since then, the talks have been suspended.

A Reagan Administration interagency group has been reviewing the comprehensive test ban proposal and the two test limitation agreements for more than a year.

#### "VITAL TO SECURITY"

Recently, the group decided unanimously to recommend to President Reagan that he not resume talks on the comprehensive test ban. Representatives from the Arms Control and Disarmament Agency and from the Departments of State, Energy and Defense agreed that underground testing was "vital to the security of the United States" in order to maintain confidence in the nation's nuclear deterrent, according to administration officials.

Specifically, participants were concerned that if the Administration was not able to test weapons from its existing stockpile, confidence in the reliability of those weapons would be eroded, officials said. In addition, the Administration is developing new nuclear weapons, such as the MX land-based and Trident II sea-based missiles, and wants to be able to test new nuclear warheads.

Another concern, the officials said, was insufficient confidence in the nation's ability to verify Soviet compliance with a total test ban. A number of experts believe that it would be difficult to distinguish between natural events, such as earthquakes, and tests at low levels. They fear that the Soviet Union thus might try to get away with such tests.

At today's meeting, White House and Administration officials said there was disagreement over what, if anything, should be said publicly about the nuclear testing policy. One official said the Departments of Defense and Energy initially favored issuing a public statement that some testing would be required as long as the nation was dependent on nuclear forces for its defense.

This was opposed by officials from the Arms Control and Disarmament Agency and the State Department, an official recounted. Both agencies warned that such a statement would foster a perception that the Administration was not seriously committed to arms control initiatives.

[From the New York Times, Nov. 27, 1982]

#### U.S. DECISION NEAR ON NUCLEAR TESTS

(By Judith Miller)

WASHINGTON, November 27.—The Reagan Administration is close to approving a proposal that would require on-site inspection as a condition for ratifying two treaties with the Soviet Union on underground nuclear testing, according to Administration officials.

President Reagan has not made a final decision, the officials said. But there is substantial agreement among officials working on the accords about the changes that the United States should propose to strengthen its ability to verify Soviet compliance with them.

Some supporters of the treaties, including Senator Charles H. Percy, Republican of Illinois, have urged the Administration not to go forward. He has privately warned that insisting on such inspection might prompt the Soviet Union to reject the treaties.

The Threshold Test Ban Treaty, signed in 1974, and the Peaceful Nuclear Explosions Treaty, signed in 1976, limit underground tests—the only kind permitted—to 150 kilotons, or about 10 times the explosive power of the bomb dropped on Hiroshima. Neither accord has been sent to the Senate, which must approve them by two-thirds majority before they take effect.

The Administration has said it would continue to abide by the limits of the threshold treaty, and the Soviet Union has made the same pledge. If one side withdrew from the threshold treaty, it would no longer be bound by the 150-kiloton limitation on its testing.

The effect of either side withdrawing from the peaceful explosions accord, which both nations say they have observed so far would probably be slight. When this accord was signed, few analysts on either side thought that many of these tests, ostensibly for "peaceful" nuclear purposes, would be conducted.

#### WANT BETTER MONITORING PROVISIONS

Last July the Administration decided to set aside efforts to negotiate a comprehensive ban on nuclear testing until verification measures of these two treaties could be improved. Officials argued at that time that the United States could not adequately verify that the Soviet Union was complying with either agreement, and that the treaties should not be approved until monitoring provisions had been upgraded.

Since then an interagency working group, composed of officials from the State, Defense, and Energy departments, the Arms Control and Disarmament Agency and the National Security Council staff has been weighing two major proposals designed to improve confidence in the nation's ability to determine that Moscow is not exceeding the testing ceiling. The National Security Council reviewed and approved the thrust of one of the proposals several weeks ago, the officials said.

They said that most agencies had now agreed on a proposal that would require the United States and the Soviet Union to provide advance notice of any test larger than 75 kilotons, or half the explosive power permitted by the treaties. Only the Defense Department is said to be insisting that the threshold for on-site inspection be lower. Defense Department officials have been pressing for on-site inspection for any test larger than 50 kilotons, officials said.

This disagreement has delayed final approval, officials noted.

Officials said that under the proposal being weighed, if the Soviet Union or the United States planned a test larger than 75 kilotons—50 kilotons, if the Defense Department prevails—the country planning the test would have to permit the other to collect geological samples from the test site. In addition, officials from the observing country would be permitted before the test to place, or watch the installment of its own monitoring equipment at the site.

#### LITTLE EFFECT ON TEST BAN

These changes would most substantially effect the Threshold Test Ban Treaty, which does not now permit any on-site inspection. The protocol of the treaty provides instead that once the accord is ratified, both countries shall provide the other with basic data about the geological composition of its testing sites, and provide information about the yield of an actual test from a site. These data are intended to permit the United States to adjust its moni-

toring equipment outside the Soviet Union and better estimate the yield of Soviet tests.

But Administration officials have said that the Soviet Union could misrepresent the data and the United States would not have independent means of determining their accuracy.

The Peaceful Nuclear Explosions Treaty, by contrast, provides for some advance notice of underground nuclear tests, some limited on-site American inspection and installation of measuring devices prior to such tests.

The draft proposals to upgrade verification provisions of the Threshold Test Ban have prompted criticism from the few legislators who have been told about them.

Senator Percy, chairman of the Foreign Relations Committee, argued in a recent letter to the White House that the proposed changes were overly restrictive and that the Soviet Union would be unlikely to accept them.

Mr. Percy, who could not be reached for comment, said in the letter that the changes, if proposed, might result in the unraveling of the treaties.

After the Administration's announcement in July, 30 senators co-sponsored a resolution urging Mr. Reagan to pursue comprehensive test ban talks with the Soviet Union and urging him to ratify the two treaties.

But Administration officials and some testing analysts insist that the monitoring provisions need improvement. They argue that on at least 11 occasions, the Soviet Union might have violated the 150-kiloton threshold.

[From the New York Times, Feb. 9, 1983]

#### U.S. PANEL URGES ON-SITE ATOM TEST CHECKS

(By Judith Miller)

WASHINGTON, Feb. 8.—An interagency panel has recommended to President Reagan that two nuclear testing treaties with the Soviet Union be revised to require on-site inspection before the accords are ratified, Administration officials said today.

President Reagan has made no decision on the treaties, signed in 1974 and 1976, but it is expected by early next week, the officials said.

They declined to say whether on-site inspection meant the presence of officials from the other country during large underground tests. But they said that, for large tests, those greater than the equivalent of 75 kilotons of TNT, the panel sought the collection of rock samples and on-site installation of monitoring devices to insure compliance.

According to the officials, the panel said there was no need to renegotiate the texts of the accords—the Threshold Test Ban Treaty of 1974 and the Peaceful Nuclear Explosions Treaty of 1976. The panel said the changes could be made by revising the protocols, or appendices, to the treaties.

Some officials fear that the Soviet Union may reject any changes. Senator Charles H. Percy, Republican of Illinois and chairman of the Senate Foreign Relations Committee, voiced concern to the White House in November that insisting on inspection might result in the unraveling of the treaties.

But the American officials said they believed Moscow would agree to renegotiate the protocols of the treaties, which limit underground tests—the only kind permitted since 1963—to 150 kilotons, or ten times the power of the bomb dropped on Hiroshima.

In July, the Administration decided to set aside efforts to negotiate a comprehensive ban on nuclear testing until the verification provisions of the two previous treaties could be improved. If agreement can be reached, the Administration would then submit the two treaties to the Senate for approval.

The proposed changes would affect mainly the Threshold Test Ban Treaty, which covers military explosions and does not now permit on-site inspection. Its protocol calls for a simple exchange of data about the geology of test sites and about the explosive power of tests. The data are used to adjust monitoring devices outside the testing country to insure more accurate measurements.

Critics of the Administration's decision to strengthen verification contend that such an exchange of data would improve American ability to detect any Soviet violations of the threshold.

But Administration officials said that these data would not be sufficient and that independent checks were needed.

The Peaceful Nuclear Explosions Treaty provides for advance notice of explosions, limited on-site inspection and installation of measuring devices before certain explosions. When the accord was signed, it was not expected that many such explosions, ostensibly for peaceful purposes, would be conducted. But the United States Government panel has also recommended some strengthening of verification provisions in this treaty's protocol.

The panel, made up of representatives from the State, Defense and Energy Departments, the Arms Control and Disarmament Agency and the National Security Council staff, first made its recommendations in October. But the Defense Department pressed for a lower threshold requiring on-site inspection. And Energy Department officials responsible for American nuclear tests resisted the recommendations because they were concerned about on-site inspection by Soviet officials.

One official also attributed the delay to "normal bureaucratic inertia."

The White House began to focus on the treaties, officials said, when Senator Percy signaled his frustration with the delays. He said last week that he would not schedule a vote on the nomination of Kenneth L. Adelman as head of the Arms Control and Disarmament Agency until the Administration indicated its intentions on the treaties.

[From the New York Times, Mar. 29, 1981]  
U.S. STUDY DISCOUNTS SOVIET TERROR ROLE  
(By Judith Miller)

WASHINGTON, March 28.—A draft report produced by the Central Intelligence Agency has concluded that there is insufficient evidence to substantiate administration charges that the Soviet Union is directly helping to foment international terrorism, Congressional and Administration sources said today.

William J. Casey, Director of Central Intelligence has asked his analysts, the sources said, to review their conclusions, given the substantial opposition to the report from other agencies.

The draft estimate, produced by the C.I.A.'s National Foreign Assessments Center, has stirred debate within Administration foreign policy circles, as foreign affairs spokesmen have publicly accused the Soviet Union of training, equipping, and financing international terrorist groups.

The review of the draft estimate has once again raised questions about the relation-

ship between intelligence officials and policy makers, with some C.I.A. officials concerned that the agency is coming under pressure to tailor its analysis to fit the policy views of the Administration.

#### CHARGES IN LAST ADMINISTRATION

Similar charges were made during the Carter Administration and resulted in frequently bitter exchanges between policy makers and intelligence officials.

Bruce C. Clark, who heads the agency's assessments, or analysis unit, is retiring from the C.I.A. in April, in what officials said was a personal decision unrelated to the dispute over the intelligence estimate on terrorism.

One official said that a successor had not been named, but another indicated that Mr. Clark's successor would be the current director of the agency's operations unit, John McMahon.

The special national intelligence estimate on terrorism was begun soon after the Administration took office, officials said. Secretary of State Alexander M. Haig Jr. said on Jan. 28 in his first news conference that the Soviet Union, as part of a "conscious policy," undertook the "training, funding and equipping" of international terrorists.

The Administration has subsequently said that combatting international terrorism is one of its key foreign policy objectives.

#### "AMPLE EVIDENCE" ON SOVIET ROLE

In addition, Richard V. Allen, President Reagan's national security adviser, said in an interview with ABC News this week that "ample evidence" had been accumulated to demonstrate the Soviet Union's involvement in international terrorism. Mr. Allen also said that the Soviet Union was "probably" supporting the Palestine Liberation Organization, which he said must be identified as a terrorist organization, through financial assistance and through support of its "main aims."

Finally, Mr. Allen concluded that Israeli air raids into southern Lebanon should be generally recognized as a "hot pursuit of a sort and therefore, justified."

Officials said that the draft estimate contained some factual evidence to support charges that the Soviet Union was directly aiding and abetting terrorist groups, but that in many instances that evidence of such involvement was either murky or non-existent.

The estimate, which was circulated for comment to the State Department, National Security Council, Defense Intelligence Agency, and the National Security Agency, stirred angry debate and response.

#### DEFINING "TERRORISM" A PROBLEM

Some officials described the dispute as "definitional," that is, that agency officials found it difficult to agree on a common working definition of what constitutes a terrorist group.

Officials from the Defense Intelligence Agency criticized the document because, they said, the facts it contained did not support what one official termed the agency's "weasel-worded" conclusion that evidence was contradictory on the extent to which the Soviet Union could be regarded as a conscious principle agent of terrorism.

Soon after the draft document was circulated and began generating comment, Mr. Casey asked to review the report. After reading the estimate, he asked that the estimate be reviewed.

"That's really the way the process is supposed to work," said one knowledgeable official. "The estimate is supposed to reflect

the views of other agencies and it's not unusual that it would be restudied and rewritten after the agencies have commented."

Other Administration and Congressional officials, however, voiced concern that the agency was once again being asked to tailor its views to fit the public pronouncements of senior Administration officials.

"There would not have been a review if the estimate's conclusions had totally supported the Administration's charges," the official said.

[From the New York Times, Jan. 24, 1982]

#### UNITED STATES SAYS PAKISTAN'S NUCLEAR POTENTIAL IS GROWING

(By Judith Miller)

WASHINGTON, January 23.—An intelligence report has concluded that Pakistan will be able to detonate a nuclear device within the next three years, but is not likely to do so, according to Administration and Congressional officials.

This conclusion is contained in an analysis, known as "Special National Intelligence Estimate 31-81," prepared by the Central Intelligence Agency and completed last month.

Intelligence officials assert that Pakistan's reticence to conduct an atomic test stems partly from President Mohammad Zia ul-Haq's unwillingness to jeopardize the Reagan Administration's six-year, \$3.2 billion military and economic aid program.

The study also contends that Pakistan is likely to continue developing and stockpiling fissile material that could be used in a nuclear device. Continued development of Pakistan's nuclear program, analysts argue, is likely to prompt increasing suspicion and hostility from India. As a result, according to the report, Pakistan could face a growing threat of a pre-emptive strike by India against its nuclear installations by the end of this year.

India and Pakistan will hold talks in New Delhi next Friday on a security pact. Foreign Minister Agha Shahi of Pakistan is expected to discuss proposals for a "nuclear-free zone" in Southwest Asia with his Indian counterpart, P. V. Narasimha Rao.

#### "IRREGULARITIES" REPORTED

The discussions are being closely followed by officials at the International Atomic Energy Agency, based in Vienna, which monitors nuclear plants. The agency has been pressing Pakistan unsuccessfully for several months to permit the installation of additional cameras and measuring devices to improve safeguards at Pakistan's 135-megawatt nuclear reactor, near Karachi.

The agency made its request after it detected "anomalies" and "irregularities" at the reactor, which is capable of producing plutonium for atomic weapons. There is no evidence that Pakistan has been diverting fuel from its civilian reactor for nonpeaceful purposes. But the agency expressed concern at a private meeting last September that the current monitoring arrangements were no longer adequate, given Pakistan's ability to produce its own nuclear fuel.

The India-Pakistan talks and the agency's effort to improve safeguards are of concern to the Reagan Administration, which persuaded Congress last month to approve \$100 million in aid for Pakistan, a downpayment on the six-year program. In addition, the United States is selling Pakistan 40 F-16 fighter planes on an accelerated schedule. The Administration says Pakistan needs the

planes to help withstand Soviet pressures from neighboring Afghanistan.

Pakistan had previously been barred from receiving American aid by a law that prohibits its assistance to countries that pursue nuclear weapon programs. Congress suspended aid in 1979 on the basis of evidence that Pakistan had established a worldwide network of purchasing agents, including bogus companies intelligence operatives, to obtain components for a uranium centrifuge enrichment plant that could be used to make fuel for weapons.

#### INDIA DETONATED DEVICE IN 1974

India detonated an atomic device in 1974, but maintained that its test was a "peaceful nuclear explosion," a distinction the United States does not accept.

The Reagan Administration has argued that Pakistan can only be dissuaded from conducting a nuclear test if it would jeopardize a strong security relationship with the United States. The new estimate tends to support this claim.

The estimate's conclusion is privately disputed by some foreign policy analysts, who doubt that Pakistan will be willing to forego a demonstrable nuclear weapons option, in light of the previous test by India.

[From The New York Times, June 21, 1982]

#### EFFORT TO HALT SPREAD OF A-ARMS SAID TO FALTER

(By Judith Miller)

WASHINGTON, June 20.—United States officials and nuclear policy specialists fear that they may be losing a 35-year-old battle to curb the spread of nuclear weapons.

Critics of the Reagan Administration say the White House has placed insufficient emphasis on stopping nuclear proliferation. A policy put forth in a paper approved last month by President Reagan, they argue, will lead to increased distribution of plutonium, a material used in nuclear weapons, which will undermine efforts to slow the spread of atomic arms.

Administration officials deny that this will be the effect of the policy. But officials and private analysts agree that efforts to discourage the spread of nuclear arms have been severely complicated by growing international and regional tensions that put pressure on nations such as Israel and Argentina to develop and test atomic devices.

Robert H. Kupperman, a nuclear specialist at Georgetown University's Center for Strategic and International Studies, said with reference to the Israeli invasion of Lebanon and the British-Argentine fighting in the Falklands:

"We had better start thinking not just about how to stop nations from getting nuclear weapons, but how to stop them from using the weapons they will inevitably get."

"The emergence of some new nuclear powers is unavoidable," concluded Lewis A. Dunn in a book published soon after he joined the Administration as special assistant to Under Secretary of State Richard T. Kennedy, a central figure in nuclear policy matters.

Many nuclear specialists have increasingly begun to focus on "managing" a world in which many nations have nuclear weapons, rather than on preventing the spread of the weapons.

But the Reagan Administration remains officially committed to preventing the spread. In Senate testimony last month, Mr. Kennedy called this a "fundamental commitment."

Toward that goal, the Administration has emphasized measures to allay political and military security concerns of countries and to enhance regional stability.

#### U.N. AIDE BACKS U.S. STAND

This approach has been criticized by several Congressional nuclear policy specialists. But it has been warmly endorsed by, among others, Hans Blix, director general of the International Atomic Energy Agency, the United Nations organization in Vienna that promotes atomic energy and monitors nuclear facilities to verify that they are not being used for military purposes.

Mr. Blix has repeatedly voiced concern that India, Israel, Pakistan and South Africa refused to sign the 1970 treaty that became the cornerstone of efforts to halt the spread of nuclear weapons.

"The alarm bells are ringing loud and clear with respect to these four," Mr. Blix said early this year.

Under the treaty, 116 nations have sworn nuclear weapons; 45 have not.

#### CAUSES FOR NUCLEAR WORRY

Nuclear policy specialists say these other alarms are sounding, if somewhat more softly:

No country capable of developing atomic weapons has acceded to the treaty in the last five years. Switzerland was the most recent.

The International Atomic Energy Agency has become increasingly polarized and politicized, as have many other United Nations organizations. Some Government analysts fear that growing political confrontations between Western industrialized countries and developing nations could eventually undermine the agency's system of international safeguards, such as inspections.

Israel's attack on an Iraqi research reactor a year ago weakened the International Atomic Energy Agency's ability to safeguard nuclear facilities ostensibly designed for peaceful purposes. The air strike touched off a debate on whether the agency was capable of quickly detecting a diversion of nuclear material from a facility. The dispute has further shaken international confidence in the agency.

A sagging demand for energy has triggered a slump in sales of nuclear reactors and a decline in the growth of nuclear power. This, in turn, has increased strains on the international system of export controls aimed at slowing the spread of sensitive technology to countries that might be trying to develop nuclear weapons.

Growing sophistication of terrorist groups and a spread of "mininukes" has increased the threat of nuclear terrorism, Administration officials say. The Central Intelligence Agency has concluded, for example, that in Europe there is a "moderate likelihood" that there would be an attempt to damage a nuclear weapons storage facility, to attack a weapon in transit, to raid a nuclear power plant or to carry out blackmail by threatening to use a nuclear weapon or by pretending to have one.

Lack of progress on arms control agreements between the United States and the Soviet Union has led to a surge in nuclear weapons arsenals and destructive ability. This, in turn, encourages nonnuclear nations to develop a nuclear ability, Mr. Blix and other specialists contend.

#### U.S. CONCERNED BY ARGENTINA

The conflict over the Falkland Islands focused Administration concern on Argentina. While there have been no startlingly new developments in Argentina's nuclear pro-

gram, now in its 31st year, some Administration officials fear that the conflict with Britain may prompt Argentina to build a nuclear bomb, especially since the Falkland surrender caused a loss of face for Buenos Aires.

The Central Intelligence Agency has estimated that Argentina could build an atomic bomb in three to five years if it chose to do so. A new report prepared by the Congressional Research Service concludes that Argentina would be able to test a nuclear explosive by the mid-1980's, "if it is willing to run the risks of getting caught at diverting safeguarded materials or of abrogating its safeguards agreements." But the report also states that Argentina could not produce an arsenal of weapons until the 1990's at the earliest.

Argentina poses a special problem not only because it has declined to sign the non-proliferation treaty or to submit all of its nuclear facilities to inspection, but also because it is building what is known as an "independent fuel cycle"—the ability to produce everything required for nuclear power. This would give Argentina the ability to make nuclear weapons quickly, without violating any safeguards agreements.

#### BOMB HELPS WEAK FEEL STRONG

"Nuclear tests are political statements, a country's way of showing that it has hair on its chest," said Warren H. Donnelly, a senior specialist at the Library of Congress and author of the report on Argentina. "So naturally there is concern about the growth of pressures that could lead a country like Argentina to prove that it is tough."

Mr. Donnelly and other specialists are also concerned about Argentina's proclaimed intention to export plutonium, which arms control officials assert would immeasurably complicate efforts to stop the spread of atomic weapons and would increase the threat of nuclear terrorism. The atomic weapons material is a man-made substance that is extremely toxic.

The Reagan Administration is also concerned about China's nuclear export policies. Intelligence reports indicate that China—a nuclear power that has not signed the treaty or joined the International Atomic Energy Agency—has attempted to sell through third parties heavy water to Argentina, and even to India despite the two countries' border conflicts.

Officials said that China's unwillingness to demand inspection of its nuclear exports is a major obstacle to concluding a nuclear cooperation agreement with the United States, which has been the subject of low-level diplomatic discussions between the two Governments.

#### PAKISTAN RESISTS INSPECTION

Another source of Administration concern is Pakistan, which has been resisting for more than six months the International Atomic Energy Agency's requests for improvements in inspection arrangements. The agency has said it can no longer assure that Pakistan is not diverting nuclear material for military purposes until it agrees to the changes.

The C.I.A. concluded recently that while Pakistan would be able to test an atomic device within three years, it was not likely to do so. Intelligence officials concluded in the estimate last December that the Reagan Administration's six-year, \$3.2 billion military and economic aid program had made Pakistan reluctant to test an atomic device.

Several Administration officials consider Pakistan a key test of President Reagan's

approach to stemming the spread of nuclear weapons. Other analysts, however, say the Administration's emphasis on thwarting the detonation of nuclear devices is misplaced.

#### ISRAELI TESTS CALLED UNNEEDED

"Israel, which is only a screwdriver away from a bomb, is so sophisticated and has access to such good information that it doesn't need to test," asserted one Administration official.

India, which tested a device in 1974, has also aroused concern. The Administration has been trying to terminate a 1963 agreement to supply fuel for India's Tarapur nuclear power plant, while persuading the Indians, to adhere to international inspection of the reactor and fuel already shipped.

But Robert F. Goheen, Ambassador to India until 1980, said recently that Indian and American diplomats had told him that India was preparing to transfer the spent, or used fuel to a nearby plant for reprocessing, in apparent violation of its agreement.

#### SOUTH AFRICA A PROBLEM

South Africa is also viewed as a major problem, but last month the Administration adopted a more flexible policy that would allow the United States to increase sales of nuclear materials to Pretoria.

Senator Charles H. Percy, Republican of Illinois and chairman of the Foreign Relations Committee, said last month that nuclear nonproliferation was "slipping among our foreign policy priorities" and that the world appeared on the verge of returning to "nuclear laissez-faire" by major suppliers.

Some members of Congress have strongly criticized the Administration for issuing a new policy paper that permits advanced countries to have more control over the reprocessing of American-supplied fuel.

They have also chided the Administration for considering the sale of centrifuge enrichment technology to Australia and for a vague offer to Mexico of assistance with research relating to reprocessing—the separation of uranium and plutonium from spent nuclear fuel.

The Carter Administration tried to discourage both those technologies, arguing that they produce materials that can easily be used in weapons, thereby complicating efforts to curb the spread of weapons.

By contrast, the Reagan Administration has said the United States would not inhibit reprocessing, enrichment or development of the breeder reactor which produces more plutonium than it consumes, in countries with advanced nuclear programs that do not pose a weapons risk.

Last month Under Secretary Kennedy said this policy was more selective and a "realistic recognition" that Japan and other European countries believed that these activities were required for energy security. But he stressed that the Administration was not "encouraging" a spread of the sensitive technology.

These explanations have not persuaded the strongest Congressional skeptics. Three Democrats—Senator Gary Hart of Colorado, Representative Jonathan B. Bingham of the Bronx and Representative Richard L. Ottlinger of Westchester—have introduced legislation to tighten several major loopholes in nuclear export laws.

#### QUIET DIPLOMACY STRESSED

Mr. Kennedy predicted last month that the Administration's "quiet, diplomatic steps and measured technical approach" had the best chance of achieving nonproliferation objectives.

In some respects, the debate over nonproliferation reflects a longstanding disagreement about the role of atomic energy.

Some critics maintain that because all nuclear power plants are potential atom-bomb factories, the only effective solution to the spread of such weapons is to phase out all nuclear development, both at home and for export.

Proponents of nuclear power respond that it is the only viable source of power for many countries and that proliferation can be controlled through diplomacy, international safeguards and tight export controls focused on a few nations.

[From the New York Times, Oct. 2, 1982]

#### U.S. SEEKS TIGHTER CURBS ON EQUIPMENT FOR SOVIET

(By Judith Miller)

WASHINGTON, October 1.—The Reagan Administration, in its broadest effort yet to slow the sale of technology to the Soviet Union, is seeking to toughen the system that the United States and its allies use to control the flow of equipment to Communist countries, according to Defense and Commerce Department officials.

The United States is expected to propose more than 100 changes, including many additions, in the list of controlled exports at a meeting in Paris next week of the Coordinating Committee for Exports to Communist Areas, known as Cocom. It will also press for a substantial increase in Cocom's budget and expansion of its enforcement abilities.

The committee, founded in the late 1940's, includes the United States, its allies in the North Atlantic Treaty Organization except Iceland, and Japan.

Officials said the American effort to update the list of controlled goods was intended to step up previous efforts to deprive the Soviet Union of products that could be bought stated civilian uses but also had military applications. Such items in the current list include computers and electronic equipment with clear military applications.

"There is hardly a major modern Soviet weapons system in which American or European technology has not been used," an American official said.

On Thursday a panel of experts appointed by the National Academy of Sciences concluded that there had been "substantial and serious" leakage of American technology to the Soviet Union, a "significant portion" of which is "damaging to national security." In its report the panel said the "damaging transfers" had occurred through legal sales to the Soviet Union, through illegal sales of proscribed products, through third world countries and through a "highly organized espionage operation."

The proposed strengthening of Cocom also appears to be indirectly related to the sanctions directed against suppliers for the new natural gas pipeline being built from Siberia to Western Europe.

Officials said the tightened export controls were needed for strategic rather than political reasons and had no direct bearing on the United States' pipeline sanctions. But a Defense Department official said, "We would be more relaxed about the pipeline if we had a strict system of export controls in place."

The proposals are expected to meet resistance from the Western allies. They view such restraints as a form of economic warfare, of which they disapprove as a matter of principle.

#### U.S. SCREENING MORE RIGOROUS

Commerce Department officials deny that this is their intent. They say that the present system is not only inadequate but also discriminates against American companies, whose exports are more scrupulously screened than Western European or Japanese exports.

The United States is expected to press, for example, for greater restrictions on semiconductors, the microelectronic devices used in everything from pocket calculators to computers and advanced military systems. A Defense Department official said the Soviet Union had about six production lines for integrated circuits, all of which use Western technology that was sometimes illicitly obtained.

A West German intelligence report published Tuesday said the Soviet-bloc countries had intensified efforts to breach Western embargoes on the sale of advanced technology with a military potential. The report, by the Office for the Protection of the Constitution, Bonn's domestic intelligence agency, says Soviet success in evading the embargoes resulted in vast savings on research and development.

#### BOARD APPLICATION IN MILITARY

This conclusion is echoed by American officials, who say that about 90 percent of the technology bought in the West is used by the Soviet military.

The United States is also expected to press for acceptance of a proposal by James L. Buckley, the State Department counselor, who suggested several changes in the monitoring plan.

These changes would include a ban on the sale of floating dry docks for ship repair and construction. Intelligence reports show that the Soviet Union recently used a dry dock purchased from Japan ostensibly for peaceful purposes to build an aircraft carrier, officials said.

Defense Department officials said the United States was also asking that robotics technology and silicon, the basic building blocks material for for semiconductors, be added to the control list.

#### EXHIBIT IV

##### DIRECTOR OF CENTRAL INTELLIGENCE DIRECTIVE 1/14<sup>1</sup>

##### MINIMUM PERSONNEL SECURITY STANDARDS AND PROCEDURES GOVERNING ELIGIBILITY FOR ACCESS TO SENSITIVE COMPARTMENTED INFORMATION

(Effective 27 November 1984)

Pursuant to the provisions of Section 102 of the National Security Act of 1947, and Executive Order 12333, the following minimum personnel security standards, procedures, and continuing security programs are hereby established for all United States Government civilian and military personnel, consultants, contractors, employees of contractors, and other individuals who require access to Sensitive Compartmented Information (hereinafter referred to as SCI). The standards, procedures, and programs established herein are minimum, and the departments and agencies may establish such additional security steps as may be deemed necessary and appropriate to ensure that effective security is maintained.

<sup>1</sup> This directive supersedes DCID 1/14, effective 1 September 1983.

### 1. Definitions

a. *Intelligence Community*—those United States Government organizations and activities identified in Executive Order 12333 or successor orders as making up such Community.

b. *Sensitive Compartmented Information (SCI)*—all information and materials requiring special Community controls indicating restricted handling within present and future Community intelligence collection programs and their end products. These special Community controls are formal systems of restricted access established to protect the sensitive aspects of sources and methods and analytical procedures of foreign intelligence programs. The term does not include Restricted Data as defined in Section II, Public Law 585, Atomic Energy Act of 1954, as amended.

c. *Senior Officials of the Intelligence Community (SOICs)*—for the purposes of this directive, SOICs are defined as the heads of organizations within the Intelligence Community, as defined by Executive Order 12333, or their designated representatives.

### 2. Purpose

The purpose of this directive is to enhance the security protection of SCI through the application of minimum security standards, procedures, and continuing security programs, and to facilitate the security certification process among Government departments and agencies.

### 3. Applicability

The provisions of this directive shall apply to all persons (other than elected officials of the United States Government, federal judges, and those individuals for whom the DCI makes a specific exception) without regard to civilian or military status, form of employment, official rank or position, or length of service.

### 4. General

a. Individuals who do not meet the minimum security criteria contained herein and who are, therefore, denied access to SCI shall not, solely for this reason, be considered ineligible for access to other classified information. Individuals whose access to SCI has been authorized as an exception granted in accordance with paragraph 6 below, shall not, solely for that reason, be considered eligible for access to other classified information.

b. The granting of access to SCI shall be controlled under the strictest application of the "need-to-know" principle, and in accordance with the personnel security standards and procedures set forth in this directive. In accordance with National Security Decision Directive Number 84 and the DCI Security Policy Manual for SCI Control Systems, signature of a DCI-authorized Nondisclosure Agreement which includes a provision for prepublication review is a condition of access to SCI.

### 5. Personnel Security Standards

Criteria for security approval of an individual on a need-to-know basis for access to SCI are:

a. The individual shall be stable, trustworthy, reliable, of excellent character, judgment, and discretion, and of unquestioned loyalty to the United States.

b. Except where there is a compelling need, and a determination has been made by competent authority as described in paragraph 6 below that every reasonable assurance has been obtained that under the circumstances the security risk is negligible:

(1) Both the individual and the member of his or her immediate family shall be U.S. citizens. For these purposes, "immediate family" includes the individual's spouse, parents, brothers, sisters, and children.<sup>2</sup>

(2) The members of the individual's immediate family and persons to whom he or she is bound by affection or obligation<sup>3</sup> should neither be subject to physical, mental, or other forms of duress by a foreign power, nor advocate the use of force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by unconstitutional means.

### 6. Exceptions to Personnel Security Standards

The exceptions to paragraph 5.b.(1) or (2) above may be granted only by the SOIC of the appropriate organization or his designee unless such authority has been specifically delegated to the head of an office or organization as set forth in interdepartmental agreements. All exceptions granted will be common sense determinations based on all available information, shall be recorded by the organization making the exception. In those cases in which the individual has lived outside of the United States for a substantial period of his or her life, a thorough assessment of the adequacy of the investigation in terms of fulfillment of the minimum investigative requirements, and judicious review of the information therein, must be made before an exception is considered.

### 7. Investigative Requirements

a. The investigation conducted on an individual under consideration for access to SCI will be thorough and shall be designed to develop information as to whether the individual clearly meets the above Personnel Security Standards.

b. The investigation shall be accomplished through record checks and personal interviews of various sources by trained investigative personnel in order to establish affirmatively to the adjudicating agency complete continuity of identity to include birth, residences, education, employment, and military service. Where the circumstances of a case indicate, the investigation shall exceed the basic requirements set out below to ensure that those responsible for adjudicating access eligibility have in their possession all the relevant facts available.

c. The individual shall furnish a signed personal history statement, fingerprints of a quality acceptable to the Federal Bureau of Investigation and a signed release, as necessary, authorizing custodians of police, credit, education, and medical records, to provide record information to the investigative agency. Photographs of the individual shall also be obtained where additional corroboration of identity is required.

### 8. Minimum standards for the investigation are as follows:

a. Verification of date and place of birth and citizenship.

b. Check of the subversive and criminal files of the Federal Bureau of Investigation, including submission of fingerprint charts, and such other national agencies as are appropriate to the individual's background. An additional check of immigration and Naturalization Service records shall be conducted on those members of the individual's immediate family who are United States citizens

other than by birth or who are resident aliens.

c. A check of appropriate police records covering all areas of the individual's residence, employment, and education in the U.S. throughout the most recent fifteen (15) years or since age eighteen, whichever is the shorter period.

d. Verification of the individual's financial status and credit habits through checks of appropriate credit institutions or, if such checks are not productive, through interviews with knowledgeable sources covering all areas of employment, residence, and education in the most recent seven (7) years.

e. Interviews with neighbors in the vicinity of all the individual's residences in excess of six (6) months throughout the most recent five (5) year period. This coverage shall be expanded where the investigation suggests the existence of some questionable behavioral pattern.

f. Confirmation of all employment during the past fifteen (15) years or since age eighteen, whichever is the shorter period, but in any event the most recent two (2) years. Personal interviews with supervisors and coworkers at places of employment covering the past ten (10) years shall be accomplished.

g. Verification of graduation or attendance at all institutions of higher learning within the past fifteen (15) years. If the individual did not attend an institution of higher learning, verification of graduation or attendance at last secondary school within the past ten (10) years.

h. Review of appropriate military records.

i. Interviews with a sufficient number of knowledgeable sources (a minimum of three developed during the course of the investigation) as necessary to provide a continuity, to the extent practicable, of the individual's activities and behavioral patterns over the past fifteen (15) years.

j. When employment, education, or residence has occurred in foreign countries (except for periods of less than one year for personnel on U.S. Government assignment and less than ninety days for other purposes) during the past fifteen (15) years or since age eighteen, a check of the records will be made at the Department of State and/or other appropriate agencies. Efforts shall be made to develop sources, generally in the United States, who knew the individual overseas in order to cover significant employment, education or residence and to attempt to determine if any lasting foreign contacts or connections were established during this period. However, in all cases where an individual has worked or lived outside of the U.S. continuously for over one year, the investigation will be expanded to cover fully this period in his or her life through the use of such investigative assets and checks of record sources as may be available to the U.S. Government in the foreign country(ies) in which the individual resided.

k. When the individual has immediate family members or other persons to whom the individual is bound by affection or obligation in any of the situations described in subparagraph 5.b.(2) above, the investigation will include an interview of the individual by trained security, investigative, or counterintelligence personnel to ascertain the facts as they may relate to the individual's access eligibility.

l. In cases, the individual's spouse or cohabitant shall at a minimum be checked through the subversive and criminal files of the Federal Bureau of Investigation and

<sup>2</sup> The requirement for U.S. citizenship in this DCID also applies to a cohabitant.

<sup>3</sup> Including a cohabitant.

other national agencies as appropriate. When conditions indicate, additional investigation shall be conducted on the spouse of the individual and members of the immediate family (or other persons to whom the individual is bound by affection or obligation) to the extent necessary to permit a determination by the adjudicating agency that the provisions of paragraph 5 (Personnel Security Standards) above are met (see Annex A).

m. A personal interview of the individual may be conducted by trained security, investigative, or counterintelligence personnel to ensure full investigative coverage. A personal interview will be conducted when necessary to resolve any significant adverse information and/or inconsistencies developed during the investigation. In departments or agencies with policies sanctioning the use of the polygraph for personnel security purposes, the personal interview may include a polygraph examination, conducted by a qualified polygraph examiner.

#### 9. Exceptions to Investigative Requirements

a. In exceptional cases, the SOIC or his designee may determine that it is necessary or advisable in the national interest to authorize access to SCI prior to completion of the fully prescribed investigation noted in paragraph 8 above. In this situation, such investigative checks as are immediately possible shall be made at once and shall include a personal interview of the individual by trained security, investigative, or counterintelligence personnel. Access in such cases shall be strictly controlled, and the fully prescribed investigation and final evaluation shall be completed at the earliest practicable moment. Certification to other organizations of individuals authorized access in such cases shall include explicit notification of the exception.

b. Where a previous investigation has been conducted within the past five (5) years which substantially meets the above minimum standards, it may serve as a basis for granting access approval provided a review of the personnel and security files does not reveal substantive changes in the individual's security eligibility. If a previous investigation does not substantially meet the minimum standards or if its more than five (5) years old, a current investigation shall be required by may be limited to that necessary to bring the individual's file up to date in accordance with the investigative requirements set forth in paragraph 8 above. Should new information be developed during the current investigation which bears unfavorably upon the individual's activities covered by the previous investigation, the current inquiries shall be expanded as necessary to develop full details of this information.

#### 10. Periodic Reinvestigations

a. Programs shall be instituted requiring the periodic reinvestigation of personnel provided access to SCI. These reinvestigations shall be conducted on a five (5) year recurrent basis, but on a more frequent basis where the individual has shown some questionable behavioral pattern, his or her activities are otherwise suspect, or when deemed necessary by the SOIC concerned.

b. The scope of reinvestigations shall be determined by the SOIC concerned based on such considerations as the potential damage that might result from the individual's defection or willful compromise of SCI and the availability and probable effectiveness of other means to evaluate continually factors related to the individual's suitability for continued access. The individual shall

furnish an up-to-date, signed personal history statement and signed releases as necessary. In all cases, the reinvestigation shall include, as a minimum, appropriate national agency checks, local agency checks, overseas checks where appropriate, credit checks, and a personal interview with the individual by trained investigative, security, or counterintelligence personnel when necessary to resolve significant adverse information and/or inconsistencies. When conditions so indicate, additional investigation may be conducted as determined by the SOIC or his designee.

#### 11. Determination of Access Eligibility

The evaluation of the information developed by investigation on an individual's loyalty and suitability shall be accomplished under the cognizance of the SOIC concerned by analysts of broad knowledge, good judgment, and wide experience in personnel security and/or counterintelligence. When all other information developed on an individual is favorable, a minor investigative requirement which has not been met should not preclude favorable adjudication. In all evaluations the protection of the national interest is paramount. Any doubt concerning personnel having access to SCI should be resolved in favor of the national security and the access should be denied or revoked. The ultimate determination of whether the granting of access is clearly consistent with the interest of national security shall be an overall common sense determination based on all available information.

#### 12. Appeals Procedures

Annex B prescribes common appeals procedures to be followed when an individual's SCI access has been denied or revoked.

#### 13. Continuing Security Programs

a. In order to facilitate attainment of the highest standard of personnel security and to augment both the access approval criteria and the investigative requirements established by this directive, member departments and agencies shall institute continuing security programs for all individuals having access to SCI. In addition to security indoctrinations (see Annex C, "Minimum Standards for SCI Security Awareness Programs in the U.S. Intelligence Community"), these programs shall be tailored to create mutually supporting procedures under which no issue will escape notice or be left unresolved which brings into question an individual's loyalty and integrity or suggests the possibility of his or her being subject to undue influence or duress through foreign relationships or exploitable personal conduct. When an individual is assigned to perform sensitive compartmented work requiring access to SCI, the SOIC for the department, agency, or Government program to which the individual is assigned shall assume security supervision of that individual throughout the period of his or her assignment.

b. The continuing security programs shall include:

(1) Individuals are required to inform the department or agency which granted their SCI access about any personal problem or situation which may have a possible bearing on their eligibility for continued access to SCI and to seek appropriate guidance and assistance. Security counseling should be made available. This counseling should be conducted by individuals having extensive background and experience regarding the nature and special vulnerabilities of the particular type of compartmented information involved.

(2) SCI security education programs of the member departments and agencies shall be established and maintained pursuant to the requirements of Annex C.

(3) Security supervisory programs shall be established and maintained to ensure that supervisory personnel recognize and discharge their special responsibility to safeguard SCI, including the need to assess continued eligibility for SCI access. These programs shall provide practical guidance on indicators which may signal matters of security concern. Specific instructions concerning reporting procedures shall be disseminated to enable the appropriate authority to take timely corrective action to safeguard the security of the United States as well as to provide all necessary help to the individual concerned to neutralize his or her vulnerability.

(4) Security review programs to ensure that appropriate security authorities always receive and exchange, in a timely manner, all information bearing on the security posture of persons having access to SCI. Personal history information shall be kept current. Security and related files shall be kept under continuing review.

Whenever adverse or derogatory information is discovered or inconsistencies arise which could impact upon an individual's security status, appropriate investigation shall be conducted on a timely basis. The investigation shall be of sufficient scope necessary to resolve the specific adverse or derogatory information or inconsistency in question so that a determination can be made as to whether the individual's continued utilization in activities requiring SCI is clearly consistent with the interest of the national security.

#### 14. Security Violations

Individuals determined to have disclosed classified information to any person not officially authorized to receive it may be considered ineligible for initial or continued SCI access. Determination will be based on an evaluation of all available information, including whether the disclosure was knowing, willful, negligent, or inadvertent. A determination of ineligibility for individuals who currently hold SCI access shall result in immediate debriefing and termination of access for cause.

#### 15. Implementation

Existing directives, regulations, agreements, and other guidance governing access to SCI as defined herein shall be revised accordingly.

#### ANNEX A

#### ADJUDICATION GUIDELINES

#### Purpose

This annex is designed to ensure that a common approach is followed by Intelligence Community departments and agencies in applying the standards of DCID 1/14. These guidelines apply to the adjudication of cases involving persons being considered for first-time access to Sensitive Compartmented Information (SCI) as well as those cases of persons being readjudicated for continued SCI access.

#### Adjudicative process

The adjudicative process entails the examination of a sufficient period of a person's life to make a determination that the person is not now or is likely to become an unacceptable security risk later. SCI access adjudication is the careful weighing of a number of variables known as the "whole person" concept. The recency of occur-

rences of any adverse incident, together with circumstances pertaining thereto, is central to a fair and uniform evaluation. Key factors to be considered in adjudication are the maturity and responsibility of the person at the time certain acts or violations were committed as well as any repetition or continuation of such conduct. Each case must be judged on its own merits and final determination remains the responsibility of the individual SOIC. Any doubt concerning personnel having access to SCI shall be resolved in favor of the national security.

The ultimate determination of whether the granting of SCI access is clearly consistent with the interests of national security shall be an overall common sense determination based on all available information. In arriving at a decision consistent with the foregoing, the adjudicator must give careful scrutiny to the following matters:

- a. Loyalty.
- b. Close relatives and associates.
- c. Sexual considerations.
- d. Cohabitation.
- e. Undesirable character traits.
- f. Financial irresponsibility.
- g. Alcohol abuse.
- h. Illegal drugs and drug abuse.
- i. Emotional and mental disorders.
- j. Record of law violations.
- k. Security violations.

Adjudicative actions concerning the foregoing items are examined in greater detail below.

#### Loyalty

DCID 1/14 establishes the categorical requirement that, to be eligible for SCI access, an individual must be unquestioned loyalty to the United States.

#### Close relatives and associates

DCID 1/4 requires close examination by the SCI adjudicator when members of an individual's immediate family and persons to whom he/she is bound by affection or obligation are not citizens of the United States, or their loyalty or affection is to a foreign power, or they are subject to any form of duress by a foreign power, or they advocate the violent overthrow or unconstitutional alteration of the Government of the United States.

Sharing living quarters with a person, regardless of their citizenship status, may be indicative of a close relationship, whether or not it is considered intimate. The potential for adverse influence or for duress should be considered in any close or long-term relationship between the subject and another individual.

The adjudicator must assess carefully the degree of actual and potential influence that such persons may exercise on the individual based on an examination of the frequency and nature of personal contact and correspondence with and the political sophistication and general maturity of the individual.

A recommendation for access disapproval is appropriate if there is an indication that such relatives or associates are connected with any foreign intelligence service.

When there is a "compelling need" for SCI access for an individual whose family member is a non-U.S. citizen and the background investigation indicates that the security risk is negligible, and exception to paragraph 5b(1) or (2) of DCID 1/4 may be recommended.

In some circumstances, marriage of an individual holding SCI access approval could present an unacceptable security risk. Such individuals are required to file intent-to-

marry statements. It is the responsibility of the SOIC to advise the individuals of the possible security consequences. If the individual marries a non-U.S. citizen, SCI access will be suspended until the case is readjudicated unless an appropriate investigation of the spouse, as required by Paragraph 81 of DCID 1/4, was conducted with favorable results. In readjudicating such cases, the same judgments and criteria as are reflected in the section apply.

#### Sexual considerations

DCID 1/4 requires that, to be eligible for SCI access, individuals must be stable, of excellent character and discretion, and not subject to undue influence or duress through exploitable personal conduct.

Sexual promiscuity and extramarital relations are of legitimate concern to the SCI adjudicator where such conduct reflects a lack of judgment and discretion or when the conduct offers the potential for undue influence, duress or exploitation by a foreign intelligence service.

Deviant sexual behavior can be a relevant consideration in circumstances in which it indicates flawed judgment or a personality disorder, or could result in exposing the individual to direct or indirect pressure because of susceptibility to blackmail or coercion as a result of the deviant sexual behavior. Such behavior includes: bestiality, fetishism, exhibitionism, necrophilia, nymphomania or satyriasis, masochism, sadism, pedophilia, transvestism, and voyeurism. Homosexual conduct is also to be considered as a factor in determining an individual's judgment, discretion, stability and susceptibility to undue influence or duress.

In examining cases involving sexual conduct of security significance, such as those described above, it is relevant to consider the age of the person, the voluntariness, and the frequency of such activities, the public nature and the recency of the conduct, as well as any other circumstances which may serve to aggravate the nature or character of the conduct. A recommendation for disapproval is appropriate when, in view of all available evidence concerning the individual's history of sexual behavior, it appears that access to SCI could pose a risk to the national security.

#### Cohabitation

The identity of a cohabitant and the extent and nature of actual or potential influence upon the subject should be ascertained. Based upon the criteria in the section on Close Relatives and Associates, a determination must be made whether such association contributes an unacceptable security risk.

Cohabitation, per se, does not preclude SCI access approval. Other factors could affect the access determination. Cohabitation with an alien, for example, requires the same security as marriage to an alien.

#### Undesirable character traits

It is emphasized that an individual's lifestyle is examined only in an effort to determine whether a pattern of behavior exists which indicates that granting SCI access could pose a risk to national security. In cases where allegations have been reported which reflect unfavorably on the reputation of an individual, it is incumbent upon the SCI adjudicator to distinguish fact from opinion and to determine which negative characteristics are real and pertinent to an evaluation of the individual's character and which are unsubstantiated or irrelevant. Relevant negative characteristics are those which, in the adjudicator's informed opin-

ion, indicate that an individual is not willing, able, or likely to protect SCI information. The adjudicator's personal likes or dislikes must not be permitted to affect the determination.

Examples of specific concerns in determining whether an individual has undesirable character traits are substantive, credible, derogatory comments by associates, employers, neighbors, and other acquaintances; any litigation instituted against the individual by such persons as a result of the individual's actions; or allegations of violations of law. A recommendation for disapproval would be appropriate for an individual who cannot be relied upon to obey rules and regulations.

In examining the circumstances of cases involving incidents of untruthfulness, the adjudicator must weigh all factors with particular emphasis on establishing the intent of the individual. Where an individual has tried to obscure pertinent or significant facts by falsifying data, i.e., on the Personal History Statement by either omission or false entry, such action should be weighed heavily against recommending access. Failure to disclose derogatory personal information, such as a court martial or serious crime, would appear to be intentional and, consequently, would warrant a recommendation for disapproval.

#### Financial irresponsibility

Financial irresponsibility represents a serious concern to the SCI adjudicator. Persons who have engaged in espionage for monetary gain demonstrate the hazard of granting SCI access to an individual with overly expensive tastes and habits or living under the pressure of serious debt.

A recommendation for disapproval is appropriate when there is a pattern of financial irresponsibility and it appears that an individual has not made a conscientious effort to satisfy creditors. In such cases, the adjudicator should determine whether the individual had been notified about the debts and whether they were legally valid or ultimately satisfied.

When the financial irresponsibility alone is not of such magnitude to warrant disapproval, it may contribute to recommendation for denial of SCI access when there is other evidence of irresponsibility.

#### Alcohol abuse

The SCI adjudicator should examine any information developed relative to an individual's use of alcohol beverages to determine the extent to which such use would adversely affect the ability of the individual to exercise the care, judgment, and discretion necessary to protect SCI information. The adjudicator should determine whether a pattern of impropriety exists, although one incident caused by alcohol abuse may be of such magnitude to warrant a recommendation for disapproval.

In determining the security impact of a person's pattern of alcohol use, the adjudicator should consider the circumstances, amount and rate of consumption, the time and place of consumption, and the physiological and behavioral effect such drinking has on the individual. For example, does the individual's drinking result in absences from work or careless work habits? Does the individual become talkative, abusive, or manifest other undesirable characteristics? Does the individual drink until intoxicated? Has the individual been arrested for any acts resulting from the influence of alcohol?

In the absence of conclusive evidence, additional insight may be available from ap-

propriate medical authorities. If the individual acknowledges having an alcohol abuse problem and is seeking help, it may be appropriate to defer access determination and monitor the individual's progress for a year or so.

If, after considering the nature and sources of information, the adjudicator determines that an individual's drinking is not serious enough to warrant a recommendation for disapproval of SCI access, it may be appropriate to recommend approval with a warning at the time of indoctrination that future incidents of alcohol abuse may result in SCI denial. The adjudicator may also recommend a reinvestigation of the individual's use of alcohol after an appropriate period of time has passed.

#### Illegal drugs and drug abuse

The SCI adjudicator should examine all allegations of an individual's use, transport, transfer, sale, cultivation, processing and manufacturing of hallucinogens, narcotics, drugs and other materials and chemical compounds identified and listed in the Controlled Substance Act of 1970, as amended. Consequently, an individual's involvement in any of these activities is of direct concern to the SCI adjudicator in order to determine the individual's capability to exercise the care, discretion, and judgment required to protect SCI information. The use of these substances may lead to varying degrees of physical or psychological dependence as well as having a deleterious effect on an individual's mental state and ability to function.

Persons involved in drug trafficking, i.e., the commercial cultivation, processing, manufacturing, purchase, or sale of such substances should normally be recommended for disapproval.

In cases involving the use of drugs, the adjudicator must consider the nature of the substance used and whether the use is experimental or habitual. The frequency, recency, and circumstances surrounding said use are key elements. For example, has the individual used "hard" drugs or hallucinogens such as heroin, cocaine, or LSD? Has the individual used drugs regularly or only on occasion? Does the individual currently use drugs? Does the individual regularly purchase drugs or participate merely when offered drugs by others? Has the individual's behavior been affected by the use of drugs and, if so, to what extent?

Once the judgment is made that an individual is a habitual user of any controlled substance (multiple use beyond the point of mere experimentation), a recommendation for disapproval is appropriate. Moreover, even experimental use of hard drugs or hallucinogens, such as LSD, could warrant a recommendation for disapproval.

#### Emotional and mental disorders

DCID 1/14 requires that persons considered for access to SCI be stable, trustworthy, reliable, and of excellent character, judgment and discretion. Emotional and mental disorders which interfere with an individual's perception of reality or reliability are of serious concern to the SCI adjudicator in determining whether an individual is able or willing to protect SCI information.

It is essential to obtain as much information as possible when an allegation has been made in this area. If feasible, the individual should be interviewed to obtain additional detail. When appropriate, government psychological and psychiatric personnel should be consulted so that psychiatric or psychological data may be properly evaluated.

If a current emotional instability appears to be a temporary condition (for example, caused by a death, illness, or marital breakup) it may be advisable to recommend postponing final action and rechecking the situation at a later date. This precludes a security disapproval for what may be a temporary condition which, when cured, would have no security implications.

Military and civilian personnel who decline to take medical/psychiatric tests when so directed by competent authority should not be recommended for SCI access.

#### Record of law violations

In determining whether an individual is stable, trustworthy, and of excellent character, judgment, and discretion as required by DCID 1/14 for access to SCI, the adjudicator must weigh carefully any record of law violations by the individual. Although a pattern of repeated minor traffic violations could be significant, the adjudicator is principally concerned with more serious criminal violations or court actions reflecting adversely upon the individual's reliability or trustworthiness.

Each case involving convictions for criminal offenses must be considered from the standpoint of the nature and seriousness of the offense, the circumstances under which it occurred, how long ago it occurred, whether it was an isolated or a repeated violation of the law, the offender's age at the time, social conditions which may have a bearing on the individual's actions, and any evidence of rehabilitation.

Any conviction for a felony will normally support a recommendation for disapproval. If the offense was committed many years prior, the individual has shown evidence of rehabilitation, and the investigation shows no other derogatory information, an approval may be considered. A large number of minor offenses, however, could indicate irresponsibility and may support an adverse recommendation.

#### Security violations

Most security violations are caused by carelessness or ignorance with no intention of compromising security. However, the record of an individual responsible for multiple violations should be scrutinized. The individual's current attitude toward security should be confirmed with his/her supervisor. A pattern of violations may be sufficient ground for a recommendation for disapproval. Individuals responsible for unauthorized disclosure of classified information may be denied initial or continued SCI access.

#### EXHIBIT V

U.S. SENATE,  
COMMITTEE ON FOREIGN RELATIONS,  
Washington, DC, May 31, 1989.

Hon. WILLIAM WEBSTER,  
Director of Central Intelligence, Central Intelligence Agency, Washington, DC.

DEAR MR. DIRECTOR: As you know, your responsibilities under the law as Director of Central Intelligence include the protection of U.S. Intelligence sources and methods.

I urgently request access to the original, complete classified assessments of the damage done to U.S. Intelligence sources and methods by the following four unauthorized public disclosures of U.S. Intelligence data:

1. The June 29, 1979 article in The New York Times, entitled "U.S. Plans New Way to Check Soviet Missile Test."

2. The various press articles revealing U.S. Intelligence data on a June, 1982 Soviet Strategic Missile Firing Exercise.

3. The various press articles about communications intelligence on the Soviet shoot-down of Korean Airlines Flight-007 in September and October, 1983.

4. The various April and March, 1986 press articles revealing that U.S. Intelligence had intercepted communications linking Libya to the terrorist bombing of a nightclub in West Berlin killing an American soldier.

I am informed that these four unauthorized disclosures of highly classified information about communications intelligence intercepts and sources and methods are among the most serious security breaches in the history of U.S. Intelligence. Indeed, in a November 19, 1979 article in The New Yorker, Senator Moynihan implied that item number one was one of the four most serious breaches of U.S. Intelligence security in history.

I thank you in advance for your prompt response to this request.

Sincerely,

JESSE HELMS.

U.S. SENATE,  
COMMITTEE ON FOREIGN RELATIONS,  
Washington, DC, May 31, 1989.

Rear Adm. WILLIAM O. STUDEMAN, USN,  
Director, National Security Agency,  
Fort Meade, MD.

DEAR MR. DIRECTOR: As you know, special responsibilities for the protection of U.S. intelligence sources and methods regarding communications intelligence.

I urgently request access to the original, complete classified assessments of the damage done to U.S. Intelligence sources and methods by the following four unauthorized public disclosures of U.S. Intelligence data, including any conclusions or correspondence about responsible persons:

1. The June 29, 1979 article in The New York Times, entitled "U.S. Plans New Way to Check Soviet Missile Test."

2. The various press articles revealing U.S. Intelligence data on a June, 1982 Soviet Strategic Missile Firing Exercise.

3. The various press articles about communications intelligence on the Soviet shoot-down of Korean Airlines Flight-007 in September and October, 1983.

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I thank you in advance for your prompt response to this request.

Sincerely,

JESSE HELMS.

## EXHIBIT VI

U.S. DEPARTMENT OF STATE,  
Washington, DC, May 8, 1989.

HON. CLAIBORNE PELL,  
Chairman, Committee on Foreign Relations,  
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: During a hearing before the Committee on Friday morning, May 5, Ambassador Richard Burt was asked whether he had ever been cited for security violations in any previous governmental posts, including a possible violation involving a briefcase. A copy of the relevant portion of the draft transcript is enclosed.

Ambassador Burt has since had an opportunity to check the records of the Department of State and would like to clarify the record of the Hearing with the enclosed statement.

We would appreciate it if you could ensure that the enclosed clarification is noted in the record of the Hearing.

Sincerely,

JANET G. MULLINS,

Assistant Secretary for Legislative Affairs.

## EXCERPT

During a hearing before the Committee on Foreign Relations Friday morning, May 5, I was asked whether I had ever been cited for security violations in any previous governmental posts, including a possible violation involving a briefcase. In response, I said I could only recall receiving a violation concerning a classified document left out on a desk in my office at the U.S. Embassy in Bonn.

To clarify the record, I asked the Department of State's Bureau of Diplomatic Security for a list of security violations received during my more than eight years of government service. During this period, I have received three notices of security violation. On May 15, 1987 and on May 6, 1986 notices were issued for unsecured documents in my office in the U.S. Embassy in Bonn. On February 4, 1983, while staying in a Brussels hotel with then-Vice President Bush, I was issued a violation for improper transmission of material in a briefcase. The briefcase was mistakenly taken and placed with the luggage of another guest. I immediately alerted a State Department security officer and the briefcase was promptly retrieved. It was the judgment of the security officer involved that the episode did not result in the compromise of any classified material. None of the three violations listed above involved sensitive compartmented information (SCI) material.

A security violation is an incident wherein classified material is not protected in accordance with regulations. The Department of State's policy is that if an individual receives three security violations within a two-year period the Bureau of Diplomatic Security recommends to the Director General of the Foreign Service that a letter of reprimand be issued to the offending individual. I have never received such a letter.

If confirmed by the Senate, I fully intend, as I stated in my testimony on May 5, to implement and enforce a strong and effective security program covering all members of the U.S. delegation in Geneva.

## EXHIBIT VII

U.S. DEPARTMENT OF STATE,  
THE INSPECTOR GENERAL,  
Washington, DC, June 6, 1989.

HON. JESSE HELMS,  
Committee on Foreign Relations, U.S.  
Senate, Washington, DC.

DEAR SENATOR HELMS: In response to your May 11, 1989 request regarding Mr. Richard Burt's security background, my office conducted a special inquiry into both the adequacy of the Department's personnel security procedures in place at the time of Mr. Burt's background investigations, and the actual handling of these investigations in the case of Mr. Burt. We received an allegation subsequent to your letter that the Department improperly investigated an incident involving Mr. Burt. Our special inquiry was expanded to address this issue as well.

With regard to the questions raised in your May 11 letter, we reviewed all applicable laws, Executive Orders, and Department of State directives regarding personnel security investigations, interviewed Department of State officials charged with personnel security responsibilities, and examined Mr. Burt's security and personnel files. His security file included three background investigations conducted by the Department: a full field investigation completed in January 1981, and update investigations completed in May 1985 and March 1989. We also reviewed the results of a 1982 FBI background investigation conducted when Mr. Burt was a candidate for an Assistant Secretary of State position.

Our examination of the Department's application of personnel security policies and procedures was limited to those used in Mr. Burt's case only. My office, as part of a broader initiative by the President's Council on Integrity and Efficiency, is undertaking a review of the Department's overall personnel security clearance program.

The later allegation related to a 35 mm. film cartridge containing marijuana that was found by security personnel in Mr. Burt's Bonn residence in 1986, while he was Ambassador to the Federal Republic of Germany. The security officers were conducting a sweep of Mr. Burt's quarters at his specific request. It was alleged that, in effect, the subsequent investigation by the Department sought to cover up the incident. We interviewed all of the Department officials concerned in this matter and examined all of the relevant files.

We have concluded that:

For the three background investigations performed by the Department of State in 1981, 1985, and 1989, the policies and procedures in effect at the time were followed. Further, with two exceptions, the Department's evaluations of these investigations were consistent with the guidelines contained in the Foreign Affairs Manual (Volume 3, Chapters 160 and 629) and the (then) Office of Security Instructions and Procedures (Volumes 2 and 3). We found that the evaluations in 1985 made no reference either to a 1983 security violation arising from Mr. Burt's loss of a briefcase containing classified information or to Mr. Burt's earlier close social relationship with Ms. Miller. However, these issues—discussed in detail in the enclosed report—are a judgment call. Based on our detailed review, we believe that inclusion of this information in the 1985 evaluation would not have reversed the decision to continue Mr. Burt's security clearance.

With regard to the marijuana found in Mr. Burt's residence:

There is no evidence whatever pointing toward Mr. Burt's use of this or of any other controlled substance while in the employ of the Department of State.

The initial investigation of the matter by the Office of Security was conducted promptly and with diligence, although in a manner inconsistent with professional investigative methodology. For example, it appears that no records were originated or retained.

The results of the investigation, for reasons unknown but in no way attributable to Mr. Burt, appear not to have been communicated formally to senior management either on an information basis or for decision.

Full details of our review are presented in the enclosed report of our special inquiry.

We are pleased to have assisted the Committee. If you or your staff have any questions about our report, please call me, Mr. Terence Shea, Assistant Inspector General for Security Oversight, or Mr. Randolph West, Assistant Inspector General for Investigations. We can all be reached on 647-9450.

Sincerely,

SHERMAN M. FUNK,  
Inspector General.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time?

MR. PELL. Mr. President, I yield 10 minutes to the Senator from Utah.

MR. HATCH. Mr. President, I thank the distinguished chairman of the Foreign Relations Committee. I thank my colleague for yielding.

MR. President, I rise in continued support of Ambassador Burt's nomination before this distinguished body. I have known Rick for a number of years and although he is officially a resident of the District of Columbia, he remains a Utahn where he grew up as a young man during the 1950's. But this is not my reason for voicing my support today.

While many of my distinguished colleagues will expound on Ambassador Burt's extensive experience as a national security expert, and address the questions over Ambassador Burt's commitment to ensuring proper security for classified material; I rise to give my colleagues some insight into Rick Burt—the man.

You see Rick Burt and I have not always seen eye to eye. While Ambassador Burt and I have had our share of hefty battles through the years over concepts and ideas, we remain friends. There are very few people I respect as much as I do him through the years, even though we have had our differences, because I find him to be honest and forthright. He is a decent man and he has proved time and again his willingness to stand up and fight for this country.

I am here to support Ambassador Burt because I think he is a person of consummate intelligence, ability, and capability. He is a person who has grown through the years, and who is

continually growing with the innate ability and determination to do what is right and proper. Although Ambassador Burt and I have disagreed in the past on various issues, I have watched him closely over the years and I have come to respect his energy and his devotion to serving our country.

I want to especially mention his work in the Federal Republic of Germany over the past 3½ years. As we can tell from today's headlines, the German relationship is becoming increasingly difficult and complex. Nevertheless, Ambassador Burt handled his duties in Germany in a very intelligent and forceful way. He worked hard to preserve NATO unity. He prodded the Germans to increase their military efforts. And he did so at times when it was difficult to do.

He paid close attention to the problems of the American military forces and their families. Indeed, just as one illustration, he took the lead in a record-breaking effort to raise funds for the USO in Germany at a time when the dollar was falling and American service families in Germany were looking for any kind of relief they could get.

That is the kind of person Rick Burt is. I also know that unlike some of our Ambassadors in the past, when he had to be tough he has been tough. He has always acted in the best interests of our country. I have respected his leadership and his ability to take a strong stand against terrorism.

He pushed the Germans to take a tougher stand against Libya at a time when we needed their support. He had them take a tougher stand against Iran and other States that sponsor international terrorism.

Mr. President, I know Rick Burt will be an effective negotiator in Geneva. He has told me he is prepared to walk away from an agreement rather than accept a bad agreement. He believes that airtight verification is essential, and he has assured me of his strong support for a space defense initiative.

Ambassador Burt is articulate. He is diplomatically skilled. He has an ability to work with people of varying persuasions and difficulties. He is a person who will be a strong advocate for our country during a period of great promise and substantial risk.

As we prepare to vote on Ambassador Burt's nomination I ask my colleagues to keep in mind the type of individual this country needs at the negotiating table in Geneva. Rick Burt has the qualifications for the job and the character, determination, and love for his country to succeed.

Let me say one other thing. When Rick Burt in the past came up before us, I voted against Rick Burt, but he has changed. He has grown. He has prospered, and he has proven to be a person of integrity and ability.

I am going to vote for him, and I ask all my colleagues to consider voting for him as well.

I thank my colleagues for giving me this time.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. I yield 5 minutes to the Senator from Delaware.

Mr. BIDEN. I thank the chairman for that time.

I wish, as we all do, there were more time, because I would like to respond point by point to the issues raised by my distinguished colleague from North Carolina who stood in opposition to this nomination.

I now ask unanimous consent to be able to submit for the RECORD a more detailed statement regarding the allegations made about Mr. Burt.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

#### SENATOR BIDEN'S STATEMENT ON THE ALLEGATIONS MADE REGARDING AMBASSADOR BURT

The allegations raised regarding Ambassador Burt are, to be sure, serious. But in my view, they are unsubstantiated, and should not disqualify Ambassador Burt.

If anything, they reveal serious weaknesses in security procedures within the Department of State. They do not, however, have any relevance to the nomination before us.

#### SERVICE AS A NEW YORK TIMES REPORTER

Allegations have been made that while serving as a reporter for the New York Times, Ambassador Burt revealed highly classified information.

The FBI and the Department of Justice looked into the matter, but they decided not to pursue the investigation. Indeed, Ambassador Burt maintains that the FBI never even asked him for the source of the newspaper article in question. So if there's any blame here, it should go to the FBI.

I do not condone the release of classified information to reporters. Nor do I encourage it. But the fact is that in 1979 Mr. Burt was a newspaperman. He is not a newspaperman any longer. In fact, for the entire decade, Ambassador Burt has been a high Government official. And no one in the Reagan or Bush administrations ever questioned Ambassador Burt's loyalty to the United States.

#### RELATIONSHIP WITH A NEW YORK TIMES REPORTER

Allegations have been made that Ambassador Burt's personal relationship with a reporter for the New York Times led to the divulgence of classified information. Ambassador Burt's relationship with this reporter, however, was well known at the highest levels of the State Department, including Secretaries Haig and Shultz. And no one in the Department ever questioned whether Ambassador Burt was a source for Ms. Miller's stories.

Indeed, reviews of Mr. Burt's official personnel file and personnel security file did not reveal any evidence of any investigation regarding Mr. Burt's relationship with Ms. Miller, any questioning of him about the articles Ms. Miller published, or any reprimand or notation about the association.

#### DISCLOSURE OF LIBYAN INTERCEPTS

It has been alleged that Ambassador Burt, in an interview following the bombing of the La Belle Disco in Berlin in April, 1986, made indirect references to U.S. ability to intercept and analyze Libyan coded communications pertaining to terrorism.

Ambassador Burt is quoted as saying on April 8, 1986: "I don't think there's any disagreement . . . in Berlin or, for that matter, in the conversations I had with senior West German officials over the weekend, that there were clear indications the Libyans were involved."

Other quotes from U.S. officials, however, were more explicit. General Bernard Rogers, then Supreme Allied Commander in Europe, said this: ". . . There is indisputable evidence that the April 5 bombing of a West Berlin Discotheque that killed a U.S. Army sergeant can be linked to a worldwide network of terrorists set up by Libyan leader Moammar Kadafi. I can't tell you how we get it, but the evidence is there." (*Los Angeles Times*, April 10, 1986).

And President Reagan himself said this: "The evidence is now conclusive that the terrorist bombing of La Belle Discotheque was planned and executed under the direct orders of the Libyan regime. On March 25th, more than a week before the attack, orders were sent from Tripoli to the Libyan People's Bureau in East Berlin to conduct a terrorist attack against Americans to cause maximum and indiscriminate casualties. Libya's agents then planted the bomb. On April 4, the People's Bureau alerted Tripoli that the attack would be carried out the following morning. The next day they reported back to Tripoli on the great success of their mission. Our evidence is direct; it is precise; it is irrefutable." (*United Press International*, April 11, 1986).

Moreover, contrary to press reports that Mr. Burt had been "rebuked" for his statement, Mr. Burt's personnel files contain no evidence of a rebuke or reprimand from the White House.

#### DISCOVERY OF MARIJUANA IN OFFICIAL RESIDENCE IN BONN

Allegations have been made that the discovery of a controlled substance at the Ambassador's residence in Bonn in January, 1986 suggest that Mr. Burt may be a security risk.

The Office of Security in Frankfurt conducted a full investigation—with Ambassador Burt's cooperation—of this incident. The investigating agent reported that there was no evidence of actual possession by Ambassador Burt or any U.S. officials associated with the Embassy.

#### SECURITY INCIDENTS

The allegation is made that Ambassador Burt may be a security risk because of careless handling of Government documents while serving as a Government official.

Altogether, there have been three security violations by Mr. Burt during his Government service. The most serious is an incident in 1983, when Ambassador Burt was traveling with the Vice President. While in Brussels on this trip, he misplaced a briefcase containing top secret information.

As the Inspector General's report notes, Mr. Burt immediately telephoned the regional security officer in Brussels. The officer located the briefcase, believed the contents were uncompromised, and immediately returned the briefcase to Mr. Burt.

According to the Inspector General's Office, the damage assessment conducted

following this incident concluded that "while the documents would not compromise intelligence sources or have national security implications, they could be embarrassing to the United States."

Mr. BIDEN. Let me make a few necessarily broad statements in the interest of time.

First, none of the allegations that were made have either risen to the level of being serious enough for us to even remotely consider whether or not this man is a security risk, and the vast majority of them are unsubstantiated. The vast majority of the allegations that have been made are in fact little more than innuendo.

Prior to Mr. Burt's marriage, a woman he was dating was a reporter for a newspaper. And that newspaper and that woman had articles published that related to classified material that Mr. Burt and probably 6,000 other people had access to, ergo, Mr. Burt must be the source of that material because he was in the employ of the Government. At the time, Secretary of State Haig, and later Secretary of State Shultz, knew full well the relationship. It did not bother them, should not have bothered them, and should not bother us now. I think it would be odd if we were going to somehow set a new standard here that no one in Government can date a reporter. That might save the reporters a lot of grief, but nonetheless it would be somewhat bizarre.

We have no Official Secrets Act in this country, thank God. And Mr. Burt violated no laws when he was a reporter prior to his employ by the Federal Government.

There was no allegation, specific allegation, made by any agency of the Government, that any action should be taken against reporter Richard Burt. I just came back from the Intelligence Committee, where I refreshed my recollection of this incident from my earlier service on the committee. I read the old files and the new file on Mr. Burt, and my recollection was accurate—no one at the time was focusing on what Richard Burt wrote as a reporter for the New York Times, or suggesting that his stories were the end of the world; but I am not able to go into any more detail on that. How much time do I have left, Mr. President?

The PRESIDING OFFICER. A minute-and-a-half.

Mr. BIDEN. Let me focus, in the last minute-and-a-half, on what is more important, the future. Here we have an incredibly qualified man who is about to take over a negotiation at one of the most historic moments in this Nation's history. The Reagan framework for arms control has proven to be a very, very solid framework within which we have an opportunity maybe to enhance, albeit slightly, the security of all mankind. There has been a

hiatus of months and months in this negotiation, while the transition has occurred. They are about to begin, I believe, next Monday. We need a man of Mr. Burt's insight, intelligence, and background on the job to deal with not only the security of this Nation, but enhancing the security of the whole world.

I have no reservation about recommending Mr. Burt to the U.S. Senate. I might add, I am recommending to the U.S. Senate a man who has repeatedly been confirmed, and has been confirmed in the face of these allegations, which are long past, but for the so-called marijuana issue. And the inspector general indicates there is no reason to believe Mr. Burt was in fact guilty of anything in that instance.

My time, I can tell by the look of the distinguished President, is up, so I will reluctantly, but respectfully, yield the floor.

Mr. PELL. I yield 5 minutes to the Senator from Indiana.

The PRESIDING OFFICER. The Senator has 13 minutes remaining.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. I thank the chairman. Mr. President, Richard Burt is a distinguished nominee of the President of the United States for a very important responsibility on behalf of our country.

As my colleagues have already detailed, Rick Burt will be in Geneva at a point of crucial importance to our country and to world peace. I want to submit for the record, Mr. President, and do so at the conclusion of these remarks, extensive statements taken from our committee's deliberation on this nominee. I want to put into the record a very substantial statement about Richard Burt's views on arms control and his specific contributions to that debate to date. Likewise, very specific rebuttals to questions raised principally by the distinguished Senator from North Carolina, during the course of the Foreign Relations Committee, on the security issue the Senator raised again on the floor today. I think these are an important part of the record.

Let me commence these remarks by saying that I have watched Richard Burt in action as a public official. I have noted during the administration of Secretary George Shultz in the Department of State the unique role played by Richard Burt, as he guided our policy with regard to Europe. He came to that position with background as a journalist, as a scholar, as a person who was extraordinarily brilliant in his insights into European character and to the ways in which our relations were to be enhanced. He worked well with the Congress—specifically, with the Foreign Relations

Committee of the Senate, the Foreign Affairs Committee in the House.

Richard Burt was a person who was accessible, articulate, imaginative, and he was loyal. He represented the President of the United States with great dignity and skill. He served Secretary Shultz with comparable skills.

It was my privilege to meet with Richard Burt in Germany during his service as our Ambassador of that country. I noted the remarkable relationships he cultivated with German officials of all political stripes, with ordinary citizens, with persons involved in festivals in the country, and with ordinary people in the street. He was an American Ambassador that carried the flag well.

He enhanced our relationship with Germany very substantially. At the same time, he was articulate about the arms control issues. I can recall one visit to Bonn following one of our Senate arms control observer group visits in Geneva, Switzerland, in which it was my privilege to visit with Richard Burt about specific reactions to those negotiations in the Federal Republic of Germany.

He was articulate about how those negotiations were being perceived in ways in which public officials in this country, including U.S. Senators, through their public statements, through their written statements, enhance the position of our country, the position of NATO vis-a-vis the Soviet Union.

He did this specifically in conversations which I enjoyed with Mr. Kohl, on that occasion, and with the distinguished President of the Federal Republic, Mr. Von Weizsacker.

Richard Burt was able always to outline precisely the position of President Reagan and Secretary Shultz and our arms control negotiators. He visited with them frequently to make certain that we were all singing the same tune and that we knew precisely the best interest of our country.

I was impressed by that diligence, that scholarship, and that effectiveness.

Mr. President, I have been impressed again with the testimony of Richard Burt before the Foreign Relations Committee and in visits that he has paid to the offices of members of that committee prior to the public hearings.

He is ready for this big assignment and indeed it is an enormous one.

As our negotiators have pointed out about 400 pages of agreed text now are there in Geneva, agreed by the Soviet Union and by the United States of America. We are on the threshold of an enormously significant treaty involving cuts in the long-range ICBM, the intercontinental ballistic missiles that have long endangered our country.

As you know, Mr. President, there is considerable visitation now about arms reductions, and we pray that those withdrawals that the Soviets have promised, the cuts that they have suggested, will in fact happen and that we can negotiate with them downward to parity and below that. Our President has enunciated a bold policy at the NATO 40th meeting.

But at the same time, Mr. President, we are on the threshold with regard to the START talks of a situation in which we are going to have to come to grips with some very tough decisions.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. LUGAR. Will the Senator grant me 3 additional minutes?

Mr. PELL. I yield 3 additional minutes to the Senator from Indiana.

Mr. LUGAR. I thank my distinguished chairman.

It is in this context that this nominee comes before the Senate.

It is our responsibility to examine carefully the ability of Richard Burt or any other nominee to handle the security of this Nation, security in detail, the handling of classified documents, the handling of his public responsibilities with the press, with Senators, with anyone. These are pertinent points.

We are indebted to the distinguished Senator from North Carolina for drawing our attention to them on this occasion and on others, but I am satisfied that Richard Burt has fulfilled the security requirements of the offices in which he has served.

Equally important, perhaps more important, we have to find when we come to these great responsibilities our very best in terms of the talents this country can send forward, people who are our most intelligent, well-informed, persons with great scholarship, with great diplomacy, with quick minds, to meet world class competition. That is what our debate is about today, the sending forth of our best at a time that the best counts not only for us but for world peace.

So I come before this body today to commend my friend, Richard Burt. I have watched him as a devoted public servant of this country perform well with excellence. I am confident that that will be the record that he will have in Geneva and I look forward, as all of us do in this Senate, to helping him in that process.

Mr. President, I am most supportive of the President's nomination of Rick Burt to serve as our Chief START Negotiator and as Head of our delegation to the Nuclear and Space Talks in Geneva. Given his previous service in government, Ambassador Burt will bring considerable corporate memory to the arms control undertaking in Geneva, a process that resumes in earnest next Monday.

Mr. President, I also want to commend the nominee and the administration for the forthright manner in which they addressed during the confirmation process a number of substantive policy issues relative to arms control as well as the policy making process that is attendant to these negotiations.

Ambassador Burt detailed for the committee his responsibilities as Head of the Nuclear and Space Talks Delegation and Chief Negotiator for START as well as his reporting channels and working relationship with the Director of ACDA. While reporting directly to the President and the Secretary of State, Ambassador Burt noted that he will coordinate directly with the ACDA Director, who will have the responsibility for backstopping the NST delegation in Washington.

Ambassador Burt also addressed measures designed to improve the security procedures, the administration, and cost accountability associated with the activities of the U.S. delegation to the Nuclear and Space Talks in Geneva. He outlined some of the actions that have already been taken to diminish any security risks in Geneva as well as actions to be undertaken in the near term:

All ACDA Top Secret information has been brought under strict control, and the Executive Secretary of each Negotiating Group has been designated as the Top Secret Control Officer, responsible for the security of all the delegations' Top Secret documents.

In addition, a new policy on access to ACDA space in the mission has been implemented, under which no individual will be given an access badge to these areas unless he or she has been certified as having the necessary clearances and a mandatory security briefing.

Ambassador Burt also outlined additional measures that will be taken:

First, every member of the U.S. Negotiating Team in Geneva, regardless of which agency they represent, will be required by me to attend a briefing on security and counter intelligence measures before they will be allowed to travel to Geneva. This briefing will be provided jointly by ACDA and the State Department's Bureau of Diplomatic Security.

Secondly, all delegation members will be provided with a written delegation security directive, which will outline, in considerable detail, the security responsibilities of each delegation member. The guidelines in this directive will cover physical security, document handling, and personal conduct.

All delegation members will be asked to sign a statement saying that they have read these guidelines and they will be encouraged to keep them for reference.

Thirdly, tighter security controls will be promulgated for all sensitive delegation documents, with strict limits on the number of copies made and the distribution of those documents.

Fourthly, a rotation system of inspecting the entire delegation area in the mission at the end of each business day will be implemented to insure that the area is secure every evening.

The security duty officer will inspect and certify in writing that that entire area is secure.

Ambassador Burt personally assured the committee that any violations of security will be addressed with tough disciplinary action, including, if necessary, dismissal of offenders from the delegation.

Ambassador Burt discussed the need for tighter controls over delegation expenditures. While the Director of ACDA is responsible for many such matters, some fall under the direct purview of the various heads of the arms control delegations in Geneva. The Ambassador committed himself to ensuring that all moneys spent by the delegation, whether for housing, transportation, representation, procurement, or any other purpose, are spent only for official purposes, that they are spent prudently, in a cost-effective manner, and accounted for promptly.

Ambassador Burt addressed the issue of the U.S. position at the START talks once the negotiations resume. The President has stated that he is committed to pursuing a verifiable and stabilizing agreement to reduce strategic arsenals significantly.

Ambassador Burt noted that when the START talks recessed last year, there were a number of areas of agreement. But he emphasized that the important thing is not so much that reductions be of a certain magnitude but that they be focused so as to enhance stability. The prospective START cuts can do this by emphasizing reductions in the capabilities of ballistic missiles, which are the most destabilizing systems. In these categories, through limits on heavy ICBM's, ballistic missile reentry vehicles, the agreed START numerical limits could result in 50-percent reductions in Soviet capabilities. The United States has no heavy ICBM's and United States missile throw-weight, which is much lower than the Soviet total, would not be reduced. U.S. ballistic missile reentry vehicles would be reduced by almost 50 percent.

Because of agreed counting rules that properly treat second-strike bomber weapons more permissively, however, reductions in the total number of strategic weapons would be less than 50 percent. Thus, strategic nuclear delivery vehicles would be reduced by more than one-third on the Soviet side and by somewhat less on the United States side.

By requiring the deepest cuts in the more threatening systems, START could decrease the capability to conduct a first strike and thus would enhance deterrence. The limit of 1,600 strategic nuclear delivery vehicles could reduce the ability of the side to break out of the START limits. The 50

percent throw-weight cut reduces Soviet ballistic lifting power, which affects warhead yields, accuracy, and their ability to break out of limits through rapid reload of additional re-entry vehicles on existing missiles.

The nominee also touched on the issue of mobile missiles in the START negotiations. While noting that it would be premature to comment on the U.S. position with respect to mobiles pending the outcome of the administration's strategic review, Ambassador Burt noted that the deployment of mobile missiles does pose new and challenging verification problems. He added:

I do believe, however, that if the verification problems associated with mobiles can be resolved, deployment of a mobile ICBM system by the United States could make a significant contribution to strategic stability.

In response to committee questions, Mr. Burt also addressed himself to the issue of Soviet insistence on a linkage between a START Treaty and a treaty flowing from the Defense and Space Talks which constrained the administration's SDI Program. He told the committee:

We will continue to argue that their position on linkage is unwarranted and should be dropped.

More specifically, Ambassador Burt commented that the "Brilliant Pebbles" concept flowing from the SDI Program shows great promise, and that it is U.S. policy to fully protect its rights, options, and obligations for assessing the feasibility of effective strategic defenses. Thus, just as the United States could not accept a Defense and Space agreement that undercut SDI, so the nominee indicated that he would never recommend that "Brilliant Pebbles" be traded away for a START Treaty.

On the related matter of the ABM Treaty, Ambassador Burt noted that the terms of that agreement must be complied with if it is to remain a viable agreement and serve the interests of the United States. He said:

Given the Soviet effort in this area, the ABM Treaty is currently in our security interest, if the Soviets come into compliance with it. Until our SDI program indicates that it would be in our interest to proceed beyond ABM Treaty limits, Administration policy is that we should preserve the Treaty and thereby maintain its limits on Soviet defense efforts. At the same time, we must not ignore the Soviet violation of the ABM Treaty."

Mr. Burt also said:

I support the President's policy that we will conclude no strategic arms control agreements until the Krasnoyarsk violation is corrected.

Mr. President, I have taken the time to outline these substantive policy positions because I believe that Ambassador Burt, in his oral and written responses to committee questions, has done a real service for the Senate in

developing one of the most complete pictures of the administration's views on strategic force modernization and arms control issues.

#### ISSUES RAISED BY SENATOR HELMS

A number of issues regarding the nominations were raised by Senator HELMS in the course of the Foreign Relations Committee hearing and consideration of Burt's nomination. They were addressed by Mr. Burt in testimony and in answers for the record. On May 11, Senator HELMS raised certain questions in a letter to the Honorable Sherman M. Funk, the inspector general of the Department of State. The inspector general responded in a June 6 report and briefed Democratic and Republican committee staff in a classified session the same day.

The issues raised and addressed in the committee and in the inspector general's report included Ambassador Burt's handling of demarches to the West German Government regarding the sales by West German firms of nuclear-related items to Pakistan, his earlier reporting of information which may have been classified while national security correspondent for the New York Times, his possible involvement in the acquisition of classified information by a reporter for the New York Times while Mr. Burt was a State Department official, possible security violations by Mr. Burt as a State Department official, and the propriety of Mr. Burt's disclosure of "clear indications" of Libyan involvement in the bombing of a West Berlin night club. Moreover, on the basis of an allegation by an outside informant, the inspector general looked into the discovery of a controlled substance at Ambassador Burt's official residence in Bonn and the possibility of the attempted suppression of a report on the matter.

#### DEMARCHES

Senator HELMS raised with Mr. Burt the matter of demarches to the West German Government regarding nuclear-related exports to Pakistan and, subsequently, demarches on chemical-related exports to Libya, Iran, Iraq, and Syria. Mr. Burt made it clear that, as Assistant Secretary, he had pressed for the raising of such issues and that, as Ambassador, he had overseen the delivery of demarches. He told the committee frankly that, "the Germans, early on, were not responsive." He also told the committee, "I think anybody who is aware of my record in Bonn will tell you that I was an extremely active ambassador. And I think that we, while we are very unhappy with the early reaction of the German Government, we now believe that the Germans have taken some remedial steps to solve this problem."

#### REPORTING PRIOR TO GOVERNMENT SERVICE

Senator HELMS charged, with particular reference to a 1979 news article, that, as a news reporter, Mr. Burt

had obtained and revealed highly classified information. Addressing the matter of the 1979 story directly, Mr. Burt told the committee, "I wrote the story not believing at the time that this would be extremely damaging."

Senator BIDEN pointed out that there is no such law as an Official Secrets Act in America. Accordingly, there is no law against publication of information which might be classified, with very few and specific exceptions.

Senator CRANSTON noted that the law against disclosure is limited to very specific forms of information concerning the nature, preparation, or use of codes, ciphers, or cryptographic systems of certain communications intelligence. For a violation to occur, the disclosure must reflect a willful intent to harm the United States.

The inspector general reported that Mr. Burt told the OIG staff with regard to the 1979 article that the FBI never asked him for the source. Moreover Mr. Burt indicated that "prior to publishing the article he had spoken to four or five influential people about it and none had suggested that it not be printed."

The committee certainly does not condone the release of information which the national interest demands be safeguarded. It is important to understand that, in instances in which there has been an unauthorized release of classified information, the culprits are officials obligated to protect the information, not reporters who use the information. The appalling proliferation of the unauthorized releases of classified information in recent years is a reflection upon the standards and integrity of some in office. The free media have a responsibility in our society to report truthfully and accurately upon the government. If they were allowed to report only what the government wished reported, the damage to our free society would be considerable. Accordingly, the only reasonable approach is to avoid overclassification in order to allow the fullest possible public debate, to assiduously protect those secrets which must be kept, and to endure the occasional disclosure of classified materials as an unavoidable price for our liberties.

#### ALLEGATIONS REGARDING INFORMATION GAINED BY REPORTER

Senator HELMS cited articles allegedly containing classified information which were written in the early 1980's by a reporter for the New York Times. The Senator asked Mr. Burt whether he knew the reporter and whether he had leaked information to her.

Mr. Burt said categorically, "Senator I have not leaked any material."

With regard to his relationship with the New York Times reporter, Mr. Burt described it as "social."

Mr. Burt continued:

I knew that she was a reporter for the New York Times, so I informed both Secretary of State Haig and Secretary of State Shultz that I did have a social relationship with Miss Miller, and asked them if they were concerned about this social relationship.

I told both Al Haig and George Shultz that there would inevitably be gossip and innuendo that I was a source of her stories. I wanted them to be aware of this. Both of them told me that it was none of their business, that they respected me and they respected my discretion.

I might just add to that, as you know, I was a New York Times reporter before entering government. I think by definition, people would suspect that if a leak appeared in the New York Times, I was responsible.

So, as I think reporters in the New York Times will tell you, I tried to be purer than Caesar's wife in dealing with the press in general and the New York Times in particular.

So, I did not hide my relationship, my social relationship, with Miss Miller. It wasn't any kind of covert relationship.

During the period that we knew one another, I appeared in social occasions, I went to dinner parties in Washington, and we had an understanding that I couldn't interfere with her career—she was free to go forward as a reporter—but that under no circumstances was I going to on any occasion discuss the subjects that she was working on.

The nominee was unable to recall precisely at his hearing which of the materials appearing in the New York Times articles in question were materials of which he had knowledge. The access discussed in a May 8, 1989, letter from Janet G. Mullins, Assistant Secretary of State for Legislative Affairs. The response indicates that Mr. Burt probably was aware of some of the materials, but not all.

The inspector general's report makes a very telling point:

Access to knowledge regarding presidential decisions, NSC decisions, and interagency decisions would have been available from multiple sources other than Mr. Burt. DOS and the Justice Department have found it extremely difficult to identify sources of unauthorized disclosure for high-level decisions having multiple sources with access.

It was clear in Mr. Burt's responses that he understands fully the differences in responsibilities and obligations between a reporter and a government official required to protect national security information. Senator CRANSTON asked Mr. Burt:

I assume that you will do your best to uphold the laws and the Constitution and to defend the country, and do nothing in any way to divulge information that would do any harm to the Nation, nor would anybody working under you be permitted, as far as you are able to control their behavior, to commit any such actions.

Mr. Burt affirmed that such would be the case.

It is important to understand that Mr. Burt has been subjected to thorough investigations prior to receiving his earlier Government nomination, as well as the negotiating post for which he has now been nominated. The investigations regarding Presidential ap-

pointments are particularly comprehensive. The inspector general has reviewed these investigative efforts. There has been nothing discovered to bring into question Mr. Burt's loyalty, or suitability for the high trust and confidence placed in him. From all indications, Mr. Burt was a valued member of the top-level teams of two Secretaries of State and President Reagan. He has now received yet another vote of confidence from a new President and a new Secretary of State.

#### SECURITY INCIDENTS

On May 8, Mr. Burt clarified the question of possible security violations during his Government service. Mr. Burt acknowledged, and the Office of the Inspector General affirmed, citations for a top secret violation involving his temporary loss of a briefcase in Brussels in 1983, a violation in 1986 involving improper storage of confidential information in his office, and a violation in 1987 involving improper storage in his office of secret materials.

In the incident involving the briefcase, it was inadvertently taken from a hotel lobby by a driver for a television network together with luggage for other guests. Mr. Burt immediately notified security personnel, and the briefcase was recovered and returned to him at a later stop. The OIG report concluded that there was no reason to conclude that the contents had been compromised.

In his May 8 response to the chairman, Mr. Burt said,

If confirmed by the Senate, I fully intend, as I stated in my testimony on May 5, to implement and enforce a strong and effective security program covering all members of the U.S. delegation in Geneva.

#### DISCLOSURES OF LIBYAN INTERCEPTS

During the course of his nomination hearing, Ambassador Burt was asked about his public statements regarding Libyan involvement in the bombing of a West Berlin nightclub in April 1986. The question was raised as to whether such public statements might have compromised or otherwise done damage to U.S. intelligence sources and methods. Ambassador Burt noted that he had been interviewed on the NBC "Today" show regarding the bombing incident and that his statement was published in the April 8, 1986, edition of the Washington Post. The statement was quoted in the Post as follows:

I don't think there's any disagreement . . . in Berlin or, for that matter, in the conversations I had with senior West German officials over the weekend, that there were clear indications the Libyans were involved. (Washington Post, April 8, 1986, p. A1.)

Ambassador Burt disputed the notion that his public statements had in any way compromised intelligence sources and methods. He denied as well that he had been officially re-

buked by superiors for those statements.

The report of the Office of the Inspector General noted that Ambassador Burt, as reported in the Washington Post article of April 8, 1986, did not reveal or imply that the information came from communications intercepts. However, subsequent quotes from Gen. Bernard Rogers and President Reagan were more explicit:

General Bernard Rogers: . . . there is "indisputable evidence" that the April 5 bombing of a West Berlin discotheque that killed a U.S. Army sergeant can be linked to a "worldwide network" of terrorists set up by Libyan leader Moammar Kadhafi. "I can't tell you how we get it, but the evidence is there," he said during a question-and-answer session after a speech at the private Brandon Hall school. (Los Angeles Times, April 10, 1986, p. 2.)

The NATO official said West German officials had intercepted communications from Libya to its embassy in East Berlin, commenting on the attack before and after it took place. "There are always messages passed back and forth between the general People's Congress (parliament) and the Peoples' Bureau (embassy) there." (United Press International, April 11, 1986.)

President Reagan: The evidence is now conclusive that the terrorist bombing of La Belle discotheque was planned and executed under the direct orders of the Libyan regime. On March 25th, more than a week before the attack, orders were sent from Tripoli to the Libyan Peoples' Bureau in East Berlin to conduct a terrorist attack against Americans to cause maximum and indiscriminate casualties. Libya's agents then planted the bomb. On April 4th the Peoples' Bureau alerted Tripoli that the attack would be carried out the following morning. The next day they reported back to Tripoli on the great success of their mission. Our evidence is direct; it is precise; it is irrefutable. (President Reagan's April 4, 1986, Address to the Nation.)

The report of the Office of the Inspector General concludes that there is no evidence of a rebuke or reprimand over the public statement from the White House on any matter, no security violation regarding the Libyan statement incident, and no reappraisal of Mr. Burt's security clearance at that time.

In a private written communication dated June 6, 1989, Lt. Gen. William E. Odom, who was the Director of the National Security Agency at the time of the Berlin nightclub bombing, has indicated that any suspicions at the time that public statements by the United States Ambassador to the Federal Republic might have compromised intelligence sources were not soundly based. Recalling a series of leaks and press reports at the time that did coincide with the loss of sources, General Odom has written:

I made a number of statements at the time as part of a campaign to stem the flood of disclosures. My intent was to limit damage, not to indict individuals per se.

General Odom noted that had he intended to blame Ambassador Burt personally:

I would have forwarded my complaint to the Justice Department, a common practice when news reports provide evidence that 18 U.S. Code 798 has been violated. I did not forward such a complaint, nor do I recall my agency doing so at the initiative of some other intelligence official.

General Odom concluded that from the evidence he has seen, it would be wrong to hold Ambassador Burt responsible for any disclosure of intelligence sources that may have emerged in the aftermath of the Berlin discotheque bombing.

#### SECURITY CHECK OF RESIDENCE

In January 1986, during the course of a security check of the official residence requested by Ambassador Burt, a team of security engineering officers discovered a container of a suspected controlled substance following a holiday open house hosted by the Ambassador. The Office of Security in Frankfurt conducted an immediate investigation with the Ambassador's full cooperation. The investigating agent reported that there was no evidence of actual possession or use by any U.S. officials associated with the American Embassy. For its part, the Office of the Inspector General conducted its own investigation of this incident and its subsequent handling by the Office of Security. The report of the Office of the Inspector General concurred in the judgment of the investigating agent, although it noted that the results of the initial investigation, for reasons unknown but in no way attributable to Ambassador Burt, appear not to have been communicated formally to senior management in the Department of State either on an informational basis or for decision.

#### CONCLUSION

Having reviewed the issues raised regarding Mr. Burt and his responses and having had access to the independent report of the State Department Inspector General, prior to reporting to the Senate, the committee reached the conclusion that Mr. Burt is fully qualified to perform his duties effectively. The START Treaty now in prospect is a critically important undertaking. Indeed, the eventual significance of the INF Treaty will hinge in great measure upon the success of the two sides in bringing about meaningful, stabilizing reductions in strategic offensive arms. Moreover, it will be essential for both sides to achieve an outcome in the defense and space talks which allows the exploration of potentially valuable improvements in strategic defenses without undermining the Anti-Ballistic Missile Treaty, which is the centerpiece of prior efforts to control strategic arms.

Mr. Burt brings to these challenges a thorough background in strategic affairs, 8 years of high-level Govern-

ment service, and an apparent commitment to pursue the President's objectives in the Geneva talks.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I yield a minute to the Senator from Tennessee [Mr. GORE].

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. Mr. President, I thank the distinguished chairman of the committee for yielding.

I did want to on this occasion speak out strongly in favor of the confirmation of Mr. Burt as our Ambassador to the START talks. I think that his qualifications are exceptional and, frankly, we have already gone far beyond the time in which this body should have acted to confirm this nomination.

We have an important historic opportunity to change the relationship between the United States and the Soviet Union by hopefully eliminating the fear of a first strike on both sides and moving toward strategic stability. It is important for the legislative branch and the executive branch to be as unified as possible when our country sits down at the negotiating table.

The very minimum we can do is to quickly move forward on the confirmation of this nominee, especially because he is so exceptionally qualified.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Four minutes.

Mr. PELL. Mr. President, I yield the remainder of my time, the 4 minutes, to the Republican leader.

The PRESIDING OFFICER. The Republican leader.

Mr. DOLE. Mr. President, I thank the distinguished chairman.

I am pleased to support this nomination. I thank both the chairman, Senator PELL, and the ranking Republican, Senator HELMS, for working out this agreement so that our Ambassador can be there for the start of the talks. I think it is very important. It is an important post.

Today we turn to the nomination of Richard Burt to be our Negotiator to the START talks. This is an important post. As everybody knows as START Negotiator Mr. Burt will have a great deal to say about the future of America's national security.

Mr. Burt is going to have a great deal to say about the future of America's national security.

Therefore, we need someone with intellect and integrity. We want to look at his past record. But sometimes we tend to focus on the nominee's past record as we have done here. So we do need to examine it carefully. We do

need the facts. We do not need hearsay.

I have been saying that it is wrong to pursue allegations without evidence to substantiate them. It was wrong to do this to our colleague John Tower, and it is the wrong thing to do to Richard Burt, it is the wrong thing to do to any nominee.

I have heard a lot of issues raised regarding Mr. Burt, but I also think it is fair to add that Mr. Burt has undergone three background investigations and has been confirmed twice by the Senate. These processes yielded no substantive derogatory information on Mr. Burt. Three Secretaries of State and two Presidents have placed their confidence in Richard Burt. And I am sure that all would agree that Mr. Burt's service as ambassador to the Federal Republic of Germany was marked by excellence.

So, as I have said before, if there is no evidence to back allegations, the President has a right to his nominee—this is President Bush's choice. And the nominee has a right to fair treatment.

But that is enough about the past.

The issue here is Ambassador Burt's future role as head of the nuclear and space talks. In that regard, I think there are some issues that I would address.

We heard about security problems in Geneva over and over at John Tower's trial. This is a matter Mr. Burt has given much thought to. In cooperation with ACDA Director Ron Lehman, he developed a plan to improve security procedures. In response to a question by the distinguished ranking member of the Foreign Relations Committee, Mr. Burt submitted a security plan he prepared for the Geneva delegation. In addition, he has given his personal assurances that any security violations will be addressed with tough action.

On matters of policy, I know that most of my colleagues share my concern about moving SDI forward as quickly as possible. I raised this same issue with Rick Burt in a personal meeting and later asked that he respond to a number of policy questions for the record.

I ask unanimous consent that those questions and the answers be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RESPONSES FROM NST AMBASSADOR-DESIGNATE RICHARD R. BURT TO QUESTIONS OF SENATOR BOB DOLE, COMMITTEE ON FOREIGN RELATIONS, MAY 5, 1989

1. Q: Mr. Burt, if you are confirmed, you will become the focal point for a number of pressures to conclude a START agreement quickly. These pressures will intensify as it appears that major issues have been resolved, leaving only difficult to explain, but often crucial, smaller ones. What steps will

you take to slow the process down and to avoid a last-minute crunch?

A: Last-minute crunches can arise only if we attempt to negotiate a START agreement against a deadline. We have no intention of doing that. Our goal is a good START agreement, not a quick one. We will attempt at all times to achieve progress toward an agreement, but we will take as long as necessary to obtain a good one. I will resist any pressures to reach hasty, ill-considered solutions to negotiating issues.

2. Q: Negotiating against a deadline can disadvantage the United States. What events over the next four years do you foresee could be used by some to establish negotiating deadlines? Will you firmly resist any Soviet attempt to create deadlines? Will you emphatically recommend against any U.S. suggestion, formal or informal, that we must negotiate against a deadline?

A: It is difficult to forecast what events could be used to establish a negotiating deadline. But this Administration has no intention to negotiate against a deadline and I will resist any or all pressures to do so.

3. Q: Elements of the INF Treaty, particularly details of verification implementation, were unfinished when the INF Treaty was signed. Some are still being negotiated with the Soviets. Do you believe that a similar approach to START would be sound? Can you assure us that every detail of START—a treaty which will fundamentally affect America's security—will be agreed in writing when a treaty is presented to the Senate?

A: In order to negotiate an arms control agreement that improves stability and is effectively verifiable, the treaty text must establish obligations that are defined as precisely as possible and procedures for assuring our ability to verify compliance with those obligations. Clearly, all essential obligations and provisions of a treaty must be agreed in detail prior to the treaty being signed. I would insist on no less for a START treaty.

Undoubtedly, a START treaty would provide for a verification body to work out some technical, logistical or administrative details of implementation and deal with compliance problems that might arise. However, such a body will not replace the need for detailed and precise obligations and provisions, including for effective verification, for a START treaty.

4. Q: Is it your understanding that all amendments, reservations and understandings included in the Senate's resolution of ratification must be communicated to the other party to a treaty in the protocol of exchange?

A: It has been and will be the practice of the U.S. Government to communicate all amendments and reservations included in the Senate's resolution of ratification to the other party or parties to a treaty at the time of the exchange of the instruments of ratification. It has also been the practice of the U.S. Government to so communicate to the other party or parties all understandings included in the Senate's resolution of ratification in cases where the Senate wanted such understandings communicated to the other party or parties.

5. Q: From time to time interim agreements, frameworks or agreements in principle have been suggested to lock in apparent progress on major issues while leaving details to be negotiated. The Vladivostok agreement is one example. Some talked of a START framework agreement prior to the May 1988 Moscow summit. Do you believe this is a sound arms control approach?

A: As you know, the START negotiations to date have produced a joint draft text of a treaty. I believe it is important to continue to focus our efforts on a detailed text with precise legal language, rather than a framework or interim agreement. This should not preclude, however, the possibility of separating out certain elements for immediate implementation if they serve our security interests as independent agreements. A case in point is the Ballistic Missile Launch Notification Agreement concluded at the 1988 Moscow Summit.

6. Q: What is your understanding of section 33 of the Arms Control and Disarmament Act and of the Case Act?

A: Section 33 of the Arms Control and Disarmament Act forbids any action that would obligate the U.S. to disarm or to reduce or limit the armed forces or armaments of the U.S. unless such action is pursuant to the treaty-making power of the President or unless such action is as the result of affirmative legislation by both houses of Congress. The Case Act requires the Secretary of State to transmit to the Congress the text of any international agreement other than a treaty no less than 60 days after its entry into force. Failure to transmit the text of the agreement within that period will result in a cut-off of funds for its implementation. Further, the Case Act requires that an international agreement may not be signed or otherwise concluded without prior consultation with the Secretary of State.

7. Q: If you are confirmed, you will be Chief Negotiator for START and the Administrative head of the Nuclear and Space Talks Delegation. Precisely what does this mean? What will be your role as head of delegation? Where would you draw the line between substance and administration?

A: As the Chief START Negotiator, I will be responsible on a day-to-day basis for leading our delegation's efforts to complete a START treaty.

As the Head of Delegation for the overall Nuclear and Space Talks, I will also stay abreast of developments in the Defense and Space Talks, particularly when issues arise in one set of talks which might affect developments in the other set of talks. Consistent with past practice, however, the Chief Negotiator for Defense and Space will get instructions directly from the President and the Secretary of State, just as I will for START. I will not act as a filter for these instructions or for his recommendations to the Washington interagency process.

8. Q: A key Soviet objective is to link the Defense and Space Talks to START. What is your view on this?

A: The US position has always been that offensive reductions are, in and of themselves, important and should proceed on their own merits. The best solution to this issue would be a Soviet decision to drop its linkage position, which is unwarranted and obstructs progress in the negotiations.

9. Q: We must prevent the Soviets from using diplomatic protocol or procedure to press for linkage between START and Defense and Space. The Bush Administration has chosen to name the START negotiator as the administrative head of the NST delegation. If you're confirmed, the Soviets will surely seek to subordinate D & S to START by going through you in your capacity as head of delegation. What steps will you take to insure that they do not succeed?

A: I am sensitive to the need to ensure that the NST delegation operates in a manner that is consistent with our position

on linkage. I will make clear to the Soviets that our Chief Negotiator for Defense and Space is indeed the primary person negotiating on defense and space issues.

10. Q: Presumably, a chief negotiator for Defense and Space will be nominated soon. For whom will he or she work? Will he or she have regular access to the Secretary of State on D & S matters? Will he or she choose the D & S deputy negotiator and other delegation members? Will he or she be included in all meetings pertaining to D & S? Will he or she be the final authority in Geneva on D & S matters, including approving reporting cables and travel for members of the D & S delegation?

A: The Chief Negotiator for Defense and Space will get instructions directly from the President and the Secretary of State, just as I will for START. I will not act as a filter for these instructions or for his recommendations to the Washington interagency process. Most delegation members are chosen by the agencies they represent; the D & S deputy will be chosen ultimately by the Secretary of State based on the advice of those he chooses to consult. In Geneva, the Chief Negotiator for Defense and Space will be the primary person negotiating on defense and space issues. Administrative arrangements are still being worked out, but he or she will be able to report back to Washington without restrictions.

11. Q: President Bush is "committed to deployment of SDI, as soon as feasible, and will determine the exact architecture of the system in (his) first term." Do you unequivocally support this policy?

A: I unequivocally support the President's policy on SDI research, development and deployment.

12. Q: Can you foresee any START outcome which could justify American agreement to a Defense and Space agreement which would forbid testing of space-based defenses or their eventual deployment? Can you assure us that you will not recommend that SDI be traded away as a bargaining chip in pursuit of START?

A: It is the policy of the United States that we will fully protect our rights, options, and obligations for assessing the feasibility of effective strategic defenses. It is also the policy of the United States that a START agreement be completed on its own merit. We will not accept a Defense and Space agreement that undercuts SDI. Therefore, I cannot foresee circumstances under which the United States would agree to give up space-based testing or the eventual deployment of defenses consistent with our national security interests. In short, I would not recommend that SDI be traded away for START.

13. Q: Turning to START, what in your view, should be U.S. objectives in START?

A: Our goal in pursuing a START agreement should be to achieve a verifiable agreement that reduces the risk of nuclear war. Such a reduction can be achieved by creating a more stable strategic nuclear balance, in which deterrence is strengthened and the incentives perceived by either side—even in a crisis—to launch a nuclear strike are reduced. Strategic force reductions can enhance stability if they are properly applied. But we will not seek reductions for reductions sake; rather, we will propose reductions that would result in a genuine diminution of the risk of nuclear war.

14. Q: Do you believe that a post-START mixture of strategic offensive and defensive forces could provide more stability than post-START offensive nuclear forces alone?

A: The United States is seeking a START treaty that will improve strategic stability through deep, verifiable reductions in strategic offensive forces. Through the SDI program, we are investigating whether effective defenses are feasible. If the promise of SDI technologies is realized, deterrence could be strengthened significantly and placed on a more stable foundation, one that involved increasing reliance on effective strategic defenses. If we decide to deploy effective defenses, it is US policy that the transition to a mix of offensive and defensive deterrent forces should be conducted in a stable—and preferably jointly managed—manner. I believe that it is possible that a post-START mix of offensive and defensive forces, as part of a well thought out transition to greater reliance on defenses, could further improve stability.

15. Q: The Reagan Administration and the Congress are on record supporting the view that START cannot be concluded until Soviet violations of existing agreements are corrected. Do you agree with this?

A: The Bush Administration position on this question is the same as that of the Reagan Administration—we will not conclude strategic arms control agreements until the ABM Treaty violation at Krasnoyarsk is corrected. I support this position.

16. Q: Some believe that the changes brought about by Soviet President Gorbachev have decreased the Soviet threat to the United States and the need for stringent verification. What is your view on this?

A: An agreement as important as a START Treaty is too important to be based on the trust of one individual's intentions; we must have stringent verification. The question of our approach to verification is being addressed in the Administration's strategic review. While I cannot prejudge the outcome of the review, I believe a Treaty should be judged verifiable if it provides sufficient confidence of monitoring Soviet activities so that a militarily significant violation would be detected in time to take appropriate countermeasures.

17. Q: With regard to verification, detecting violations at suspect sites is one of the most difficult challenges for arms control. If the Soviets were to cheat, they would most likely do it at a site undeclared for treaty purposes, and therefore, not subject to inspection. In your view, does the provision for verification at ballistic missile rocket production facilities approved by the previous administration last fall provide effective verification? If yes, explain how. If not, what ideas do you have to verify compliance with a START agreement at suspect sites?

A: The issue of suspect-site inspection is being reviewed as part of our overall strategic review. I can tell you, however, that a great deal of work was done during the Reagan administration to find the appropriate balance between our need to inspect suspect Soviet facilities and our need to protect sensitive U.S. facilities from exposure to intelligence gathering by Soviet inspectors. While I cannot prejudge the outcome of our current review, it does seem sensible to limit this inspection right to those kinds of locations where cheating would be most likely and most significant militarily, such as ballistic missile rocket production plants.

18. Q: The INF Treaty's resolution of ratification contains a declaration that "because the reductions contemplated under any START agreement would change the character and optimal mix of strategic nuclear forces that the United States will need to maintain stability, the United States

Congress and the President should agree on the character of, and funding for, these forces before any START agreement, framework or otherwise, is signed or agreed to.

Section 980 of the FY-89 Defense Authorization Act, (the Dole-Byrd-Wilson amendment) calls for a report on alternative post-START force structures. The previous administration was unable to deliver a required interim report. However, National Security Adviser Scowcroft and Secretary of Defense Cheney have assured us that the report will be delivered by June 15. As a negotiator, do you believe this type of analysis is necessary so that you will know what the range of acceptable force structure outcomes is? Do you believe it is necessary that the Congress and the American people be informed, up front, what strategic offensive and defensive modernization is necessary in order to insure that START truly enhances stability? If you are confirmed, will you do everything, within the limits of your office, to see that the section 908 report is completed and delivered on time?

A: I believe it is important that we maintain a coherent program of force structuring and arms control. This requires a clear understanding of both the arms control provisions that can enhance the deterrent effect of our force structure and the force structuring decisions that can make our arms control efforts more stabilizing. This understanding should be shared by the Administration, Congress and the public. I will support efforts to complete the section 908 report on time.

19. Q: Many believe that START reductions of offensive nuclear forces and strategic defenses are complementary. START would limit the size of offensive forces to be defended against. A strategic defense system could compensate for any shortfall in verification or in the stability provided by the post-agreement offensive force structure. Furthermore, a Phase One strategic defense system would move us toward a world in which strategic stability is defined more in terms of damage limitation than in terms of damage expectancy. Do you see START and strategic defense as complementary, unrelated or incompatible? Please explain. Do you believe defenses should be part of any post-START force structure?

A: I believe that stabilizing START reductions and effective defenses are fundamentally complementary. Both hold the potential to reduce the risk of war. Thus, the U.S. should keep open an option to deploy defenses in a post-START environment, should effective defenses prove feasible.

20. Q: The Soviets have insisted upon limiting Sea-Launched Cruise Missiles (SLCMs) in START. SLCMs in our post-START force structure would enhance stable deterrence, therefore, they should not be prohibited in START. However, no workable way to verify numerical limits or to distinguish nuclear SLCMs from conventional ones has yet been found. What are your views on this issue?

A: SLCMs pose major verification challenges. This is why the United States has favored a non-binding "declaratory" approach under which each side would periodically announce its nuclear SLCM deployment plans. Our position on SLCMs is being addressed in the Administration's strategic review. It would be premature to discuss US policy on this matter pending the outcome of the review.

21. Q: The INF Treaty's resolution of ratification includes a declaration that in

START "it should be the position of the United States that no restrictions should be established on current or future non-nuclear air or sea-launched cruise missiles developed or deployed by the United States or on non-nuclear ground-launched cruise missiles of ranges not prohibited by the INF Treaty." Do you support this policy?

A: The US position has been that all existing long-range air-launched cruise missiles would be considered nuclear-armed, while future conventionally armed long-range ALCMs that are distinguishable from nuclear-armed ALCMs would be considered conventionally armed and not limited. The US has also opposed limits on conventionally armed SLCMs. These positions are being addressed in the Administration's strategic review. Our position on long-range GLCMs is also under review. It would be premature to discuss US policy on this matter pending the outcome of these studies.

22. Q: The so-called "futures" issues arose as a surprise during the INF ratification process, and proved to be a very difficult one. As a condition to its consent to ratification, the Senate insisted that a written clarification agreed by the two parties have the same force and effect as the treaty. Even with this, many Senators still believed that the United States was forced into a disadvantageous and unintended interpretation of the treaty. What steps will you take to prevent a similar occurrence in START?

A: I will make every effort to ensure that all obligations in a START Treaty are clear and unambiguous, and that both sides share a common interpretation of those obligations.

23. Q: Four years ago the Senate established an Arms Control Observer Group which enjoyed a close working relationship with our negotiators. We hope this relationship will be continued and strengthened with this Administration. What are your views on working with this group?

A: The Arms Control Observer Group serves a vitally important function, and I share your hope that its relationship with the Administration will be continued and strengthened. I intend to work closely with this group to help bring that about.

Mr. DOLE. It is fair to say that in his responses, Ambassador Burt stated that he unequivocally supports the President's policy on SDI, and that a defense and space agreement that undercuts SDI is unacceptable. He also said that it is his belief that stabilizing START reductions and effective defenses are fundamentally complementary.

It would also point out that as our Ambassador to Germany, long before he knew he would be considered for the START post, Richard Burt was speaking in favor of SDI development and United States-German cooperation on defenses.

On START itself, it is no secret that I have said many times that we need to slow down and do it right. In response to my questions, Mr. Burt said:

This administration has no intention to negotiate against a deadline and I will resist any or all pressures to do so.

We do not want to set a deadline and then say we have to meet that deadline with a hurried treaty.

Mr. Burt's answers to my questions reveal a good understanding of strategic issues which I do not have time to go into now, but I have placed the full text in the RECORD.

Let us also keep in mind that any treaty Mr. Burt negotiates will ultimately be measured by us against the testimony he has given in this confirmation process. I believe Mr. Burt understands that.

I would also note he is fully committed to continuing the close working relationship between the delegation and the Senate arms control observer group.

There are now 20 members of that group. It is a very important group. It is an idea that Senator ROBERT BYRD, now President pro tempore, had when he was majority leader. We believe it has worked quite well. We saw evidence of it in the INF debate on the Senate floor.

So I am prepared to vote. I would be pleased—and I know President Bush will be pleased—if Mr. Burt can be in Geneva on Monday, and I think that is what we should do.

Mr. President, I ask unanimous consent that Mr. Burt's security plan, in addition to his answers to my questions, and excerpts from his speeches in Germany be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXCERPT OF SPEECH GIVEN BY AMBASSADOR RICHARD BURT AT KONRAD ADENAUER FOUNDATION IN ST. AUGUSTIN ON NOVEMBER 12, 1985

The second element of our common strategy must be strength. I do not simply mean military strength. That is not the only kind of strength we require, or even the most basic kind. We must maintain the strength of our values, our institutions, our economies. To do that in an era of rapid change is not easy. But military strength is important. The Reagan Administration has taken major steps to restore America's defenses. The Federal Republic, too, has in recent years exercised an increasing leadership role in efforts to strengthen common Western defense—a role I believe deserves wider recognition.

Under two successive governments, the Federal Republic played a major part in the formulation and implementation of the NATO decision to deploy a new generation of intermediate range nuclear missiles. It was Helmut Schmidt who first called the Carter Administration's attention to the dangers posed by the SS-20. Germany had a large role in formulating the NATO response to that danger. It was Chancellor Kohl's government that took the tough and courageous steps needed to implement that decision. I know from my own experience as Chairman of the NATO Special Consultative Group how important Germany was in the negotiating efforts. The decision of the Dutch Parliament a few days ago to deploy cruise missiles, and the deployments already carried out in Germany, the U.K., Italy and Belgium, would never have happened without this historic exercise of German leadership.

The Federal Republic has also played a major role in strengthening NATO's conventional defenses and modernizing its defense concepts. The Kohl-Reagan communique of November, 1984 may in this regard be the most important document setting out alliance defense objectives since the definition of flexible response in 1967. The Kohl-Reagan declaration led within days to a NATO Defense Ministers' decision endorsing a stronger conventional defense effort, designed to reduce NATO's reliance on the early use of nuclear weapons.

One must also call attention to the German government's recent decision to extend the period of military service. It was a courageous decision, but also an absolutely necessary one. At a time of growing Warsaw Pact capabilities, and while we seek to give new impetus to negotiations in Vienna on conventional force reductions in Europe, nothing is more essential than to maintain our existing troop levels while enhancing their capabilities.

Finally, of course, it was Chancellor Kohl who, in a policy statement to the Bundestag on April 18, 1985, offered the warmest, most unqualified endorsement of President Reagan's Strategic Defense Initiative, calling the American research program "justified, politically necessary and in the interests of overall Western security." Last month, the Federal Security Council reendorsed this statement as an expression of the entire government's policy. And it was Chancellor Kohl and other German leaders who first directed American attention to the issue of allied participation in this research program, and made us realize the potential for cooperation. I am confident that our two governments will soon reach an agreement that will permit us both to benefit to the maximum extent from cooperation on SDI.

EXCERPT FROM SPEECH GIVEN BY AMBASSADOR RICHARD BURT AT THE INAUGURATION OF MESSEURM TOWER IN FRANKFURT ON JULY 13, 1988

In our strategic arms negotiations with the Soviet Union, we must nail down the agreement to reduce each side's strategic arsenal by 50 percent. At the same time, we must ensure that the United States is left with a fully reliable, survivable and effective deterrent. In order to achieve such an agreement, and secure such a deterrent, the United States needs to pursue its strategic modernization program, move forward with the deployment of a survivable mobile land-based missile, and continue to develop a viable system of strategic defense.

AMBASSADOR RICHARD BURT—GENEVA DELEGATION SECURITY: ACTIONS TO BE TAKEN

Senator, I understand that a number of important actions have already been taken by the Arms Control and Disarmament Agency to strengthen security controls in Geneva. For example, all ACDA Top Secret information has been brought under strict control and the Executive Secretary of each Negotiating Group has been designated as the Top Secret Control officer, responsible for the security of all of that delegation's Top Secret documents. In addition, a new policy on access to ACDA space in the Mission has been implemented under which no individual will be given an access badge to these areas unless he or she has been certified as having the necessary clearances and a mandatory security briefing.

If confirmed by the Senate, I can assure this committee that I intend to go much further in enhancing our security posture in

Geneva. In cooperation with the ACDA Director and with the State Department's Bureau of Diplomatic Security, I plan to take the following additional measures:

(1) Every member of the U.S. negotiating team in Geneva, regardless of which agency they represent, will be required by me to attend a briefing on security and counter-intelligence measures before they will be allowed to travel to Geneva. This briefing will be provided jointly by ACDA and by the State Department's Bureau of Diplomatic Security.

(2) All delegation members will be provided with a written Delegation Security Directive which will outline in considerable detail the security responsibilities of each delegation member. The guidelines in this directive will cover physical security, document handling and personal conduct. All delegation members will be asked to sign a statement saying that they have read these guidelines and they will be encouraged to keep them handy for reference.

(3) Tighter security controls will be promulgated for all sensitive delegation documents with strict limits on the number of copies made and the distribution of these documents.

(4) A rotation system of inspecting the entire Delegation area in the Mission at the end of each business day will be implemented to ensure that the area is secure each evening. The "Security Duty Officer" will inspect and certify in writing that the entire area is secure.

(5) I personally will ensure that all violations of security are addressed with tough disciplinary action, including, if necessary, dismissal of repeat offenders from the delegation.

Senator, let me conclude by assuring you once more that security will be a high priority item for me in Geneva and that I will ensure that all delegation members understand and share my concern in this area.

Mr. HELMS. Mr. President, first of all, I anticipated some of the remarks that would be made on the floor, such as there is "no evidence" of any lack of responsibility by Mr. Burt in the past. I said at the outset, I think, if you will review my earlier comments, that Mr. Burt has a number of personal friends; that he is good at making personal friends. I would like to be his personal friend.

But that is not the question. The question is whether he has been responsible in the past.

Now, I challenge Senators to do tomorrow, after the fact, what I have done this day. I asked CIA and NSA for damage assessments of these leaks. I consulted the Senate Intelligence Committee and its files. I cannot give you the answers to the questions I asked. Senators can get those themselves. The answers are highly classified at the code-word level. But I suggest that each Senator who has any doubt about anything that I have said about Mr. Burt do as I did: Go to the Intelligence Committee, ask the experts, and get out the files and ask the following questions:

With respect to the 1979 CHALET damage assessment: First, does the material for Senators include a

damage assessment of the CHALET leak in Burt's New York Times article made in 1979?

Second, how severe was the damage assessment made in 1979?

Third, does it show that in 1979 we believed that there was severe damage to U.S. communications, intelligence sources, and methods?

Fourth, was there a reassessment of the damage in 1982?

Fifth, does this reassessment seek to reanalyze the 1979 damage once it has become a political issue?

I cannot say what is in the files today, but committee members did discuss that reassessment in 1982.

Mr. President, allow me to read a summary of the debate on this point during the confirmation of Mr. Burt on February 16, 1983, prepared by the Senate Republican Policy Committee:

The Senate Select Committee on Intelligence did an assessment of the damage which Mr. Burt did with the article and concluded that the information he released fit the literal definition of "top secret"—that is, information the release of which could be expected to do exceptionally grave damage to national security. The full case of the damage incurred must be made in closed session because the matters revealed by Mr. Burt are part of a top-secret mosaic, parts of which we hope the Soviets do not know.

Now, that was a reassessment.

As to the Libyan intercept case of 1986, ask the questions, I say to Senators. Go to the Intelligence Committee and see what answers you get to the same questions I asked them today.

The first question being: Does the material include a May 30, 1986 letter from the CIA Director to the then chairman of the Senate Intelligence Committee, Mr. DURENBERGER, about the problems caused by the revelation of the Libyan intercepts?

Second, did the Director of the CIA believe the damage to be "severe" as reported at that time in the press?

Third, does the material include a letter dated May 7, 1986 from General Odom, Director at that time of the NSA, a letter to the Attorney General?

Is there such a letter? Ask the question. See what the letter says.

Fourth, does that letter ask for an investigation of sources of the leak?

Fifth, does it include an assessment of severe damage?

Sixth, does the gravity of the request imply that General Odom believed—no matter what he says now—believed at that time that there should be prosecution of the guilty offenders?

Now, I hope Senators will do as I did. They are going to vote to confirm him. I may be the only Senator voting against him. That is all right. I have been alone before.

As I said at the outset, it is nothing personal against Mr. Burt, except I am concerned about my country. If we were voting whether Mr. Burt was a nice guy and a personable guy, I vote

aye. But my concern is about the security of this country and if I have done nothing else by prosecuting this thing, maybe I have gotten through to Mr. Burt that he ought to be an awful lot more careful in the future than he has been in the past.

Mr. Burt is a darling of the major news media. He has been a part of it.

Mr. President, I have several things that I want to have printed in the RECORD.

The first is a letter written by the distinguished Senator from Iowa to the distinguished minority leader of the U.S. Senate. I ask that Senator GRASSLEY's letter be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. Mr. President, on June 6, 1989, Lt. Gen. William Odom wrote a letter to Mr. Burt at Mr. Burt's request. In other words, he went to him and said: "General, help me out." Help me out. Senator HELMS knows about what you thought way back then.

Obviously the purpose of the letter was to clear Mr. Burt of Lieutenant General Odom's previous charges that Mr. Burt had severely damaged communications intelligence sources and methods by disclosing United States intercept of Libyan terrorists' communications.

In this letter, General Odom refers to what he terms "my suspicions" and "my earlier suspicions" that Mr. Burt's television appearance just after the bombing of the Labelle Disco in West Berlin caused the disclosure of intelligence sources that allowed us to implicate the Libyans.

In his June 6, 1989 letter, General Odom says "From the evidence I have seen, it would be wrong to hold you, Mr. Burt, responsible."

That answer seems more attuned to today's political situation than to General Odom's assessment when all the facts and information were fresh in his mind. Perhaps now that he has retired, the immediacy of the problem has receded from the forefront of his mind. Indeed, General Odom admitted to a Republican senior professional staff member of the Senate Foreign Relations Committee on June 8, 1989, that in April 1986, he, General Odom, had been "angry at Mr. Burt" for the leak of the Libyan intercepts. A former high Defense Department security official has corroborated that General Odom was angry in 1986 at Mr. Burt for the Libya intercept leak.

Is there not a contradiction between General Odom's 1986 suspicions and anger regarding Mr. Burt and his June 6, 1989 pious absolution of Mr. Burt's responsibility?

That contradiction is even clearer when we read General Odom's classified letter of 1986 to the Justice De-

partment. I think General Odom realizes just how damaging his 1986 classified letter is, and that is why he is trying to explain it away after the fact. And I do not think he has succeeded in explaining it away.

According to a letter to me of 14 June, 1989 from the Deputy Director of the National Security Agency, General Odom wrote a classified letter to the Justice Department in 1986 in which General Odom requested that the Justice Department investigate who the source of the Libya leak was. The letter to the Justice Department also contains a classified assessment of the damage of the Libya leak. The clear implication of such a letter is to prosecute those found responsible for the Libya leak.

The General Odom classified letter to the Justice Department contradicts General Odom's June 6, 1989, unclassified claim that,

If I had intended to blame you personally, I would have forwarded my complaint to the Justice Department. \* \* \* I did not forward such a complaint, nor do I recall my agency doing so at the initiative of some other intelligence official.

Mr. President, the facts are as follows. It was well known to many security officials that General Odom blamed Mr. Burt for the Libya leak and was angry at him. He did initiate a complaint to the Justice Department in 1986. While Mr. Burt may not have been named in the complaint, it was widely known in the intelligence community that Mr. Burt was the chief target of General Odom's complaint.

Mr. President, I ask unanimous consent that the Odom letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

June 6, 1989.

Ambassador RICHARD BURT,  
Department of State,  
Washington, DC.

DEAR AMBASSADOR BURT: You asked me to reconsider my suspicions that your television appearance the Monday after the bombing of the Labelle Disco in Berlin caused the disclosure of intelligence sources that allowed us to implicate the Libyans.

Having looked them over, I do not believe my earlier suspicions are soundly based. At the time I was facing a series of leaks and press reports that did indeed coincide with the loss of sources. Several high level officials were speaking out on the matter, and backgrounders were being given. I made a number of statements at the time as part of a campaign to stem the flood of disclosures. My intent was to limit damage, not to indict individuals per se.

If I had intended to blame you personally, I would have forwarded my complaint to the Justice Department, a common practice when news reports provide evidence that 18 US code 798 has been violated. I did not forward such a complaint, nor do I recall my agency doing so at the initiative of some other intelligence official.

From the evidence I have seen, it would be wrong to hold you responsible.

Sincerely,

WILLIAM E. ODOM,  
Lieutenant General, USA, Retired.

Mr. HELMS. Mr. President, in summary, it gives me no pleasure to stand virtually alone if not entirely alone in any matter. But I have these doubts about Mr. Burt and, as I said at the outset of my remarks a while ago, if my brother, whom I love dearly, had been nominated for this post and if he had had the record that is so clear to any Senator who will go to the Senate Intelligence Committee, I would not vote for my brother.

We can get up here and say: no evidence. We can say he is distinguished. He has integrity. He is responsible and he has done a good job. But the proof of the pudding is not only in the eating, it is in the files. And I challenge Senators again to do precisely as I have suggested. Go to the Senate Intelligence Committee and ask the questions as I did earlier today of the staff in terms of what is in the files. Then they will find out whether there is "no evidence." Then they will find out about the missing briefcase.

Perhaps they will even wonder how that marijuana got there. Not that that is any big thing in the overall picture. But the pattern of Mr. Burt's responses to questions bordered on being arrogant. He knew he had friends in this Senate and he was not worried about being confirmed by the U.S. Senate. All he had to worry about was one Senator who would stand up and say wait a minute. I have said wait a minute. I am prepared to vote. I know how the vote will go. There is nothing unusual about that.

#### EXHIBIT 1

U.S. SENATE,  
Washington, DC, June 14, 1989.

HON. ROBERT J. DOLE,  
Senate Republican Leader,  
Washington, DC.

DEAR BOB: Over the past several months, I have spent considerable time looking into what are clearly major security problems within our arms control delegation in Geneva. I have been absolutely appalled at the lack of professionalism and disregard by some ACDA employees and detailees for the control and safekeeping of information that is among the most sensitive produced by our government. In addition to my own inquiry, the GAO also has conducted three investigations into ACDA security deficiencies, the most recent dated November 1988. These reports suggest security violations may be ongoing.

Given the sensitive nature of the delegation's mission in Geneva, and given the serious nature of past and perhaps ongoing security violations within ACDA, it is of paramount importance that the new Head of Delegation and Chief START Negotiator demonstrate the highest degree of integrity and credibility so that he can effectively implement an agency-wide clean-up.

On May 5, 1989, the Senate Foreign Relations Committee held a confirmation hearing on the nomination of Richard Reeves Burt as Head of Delegation on Nuclear and

Space Talks and Chief Negotiator on START. Discrepancies between Mr. Burt's May 5 testimony and his own security record have recently been brought to my attention, and they have raised questions that I believe must be addressed before the Senate can proceed with consideration of the Burt nomination.

On May 5, Mr. Burt was asked about the number of security violations he has been cited for while serving in the State Department. Mr. Burt recalled only one violation. He was asked if he were ever cited for a violation involving Top Secret information contained in a briefcase. Mr. Burt recalled no such violation.

Since the May 5 hearing, a secret report by the State Department's Inspector General regarding Mr. Burt has been made available to the Senate. That report reveals discrepancies with respect to Mr. Burt's statements before the Committee about his violations. Mr. Burt issued his own clarification to his May 5 response in a letter to the Committee dated May 8.

According to the IG report, Mr. Burt received and signed an acknowledgement for three violations between 1983 and 1987. Furthermore, one of the three violations involved the loss of a briefcase in Brussels in which he was carrying Top Secret information. It appears that that information may have been compromised.

Based on the State Department's IG report and the June 8 report by the Foreign Relations Committee on the Burt nomination, the matter of Mr. Burt's security record remains unresolved, in my view. It appears that the Brussels Regional Security Officer, the Foreign Relations Committee, and the DOS IG all drew their respective conclusions based upon the responses of Mr. Burt, and without the benefit of an independent and professional investigation. Referring to the briefcase matter in his report on Mr. Burt, Sherman M. Funk, the DOS IG, states that "it's a judgment call" whether or not this information would have reversed a 1985 decision to continue Mr. Burt's security clearance. I am sure you will agree that any sound judgment requires a full review of the circumstances surrounding the matter in question. In this context, it seems appropriate that the circumstances surrounding the other two violations Burt was cited for should also be reviewed.

My concerns about this nomination are not directed toward Mr. Burt personally, as I have found him to be a friendly and engaging acquaintance. My concerns are twofold. First, our Geneva delegation is suffering from an image of lax control with respect to security, including instances in which very sensitive information almost certainly was compromised. In addition, there are numerous reports of unprofessional behavior on the part of ACDA employees and detailees, and their actions may have jeopardized our national security.

Second, I believe it is in the interest of both Mr. Burt and the President of the United States to have these discrepancies resolved now rather than upon subsequent investigation. While it is not possible to send Caesar's wife to head our Geneva delegation, it is nonetheless desirable that no question remain as to the integrity of our ambassador there.

I hope that you can assist me in resolving these concerns either prior to the Burt nomination or upon subsequent investigation. Thank you for your cooperation.

Sincerely,

CHARLES E. GRASSLEY.

Mr. HELMS. Mr. President, have the yeas and nays been requested on this nomination?

The PRESIDING OFFICER (Mr. LIEBERMAN). They have not, Senator.

Mr. HELMS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. I yield back the remainder of my time and I suggest we vote.

The PRESIDING OFFICER. There being no further debate, the question is: Shall the Senate give its advice and consent to the nomination of Richard Reeves Burt, of Arizona, to the rank of Ambassador during his tenure of service as Head of Delegation on Nuclear and Space Talks and Chief Negotiator on Strategic Nuclear Arms [START]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Texas [Mr. GRAMM] is necessarily absent.

I further announce that, if present and voting, the Senator from Texas [Mr. GRAMM] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 89, nays 10, as follows:

#### [Rollcall Vote No. 92 Leg.]

##### YEAS—89

Adams	Fowler	Metzenbaum
Baucus	Garn	Mikulski
Bentsen	Glenn	Mitchell
Biden	Gore	Moynihan
Bingaman	Gorton	Murkowski
Bond	Graham	Nickles
Boschwitz	Harkin	Nunn
Bradley	Hatch	Packwood
Breaux	Hatfield	Pell
Bryan	Hefflin	Pressler
Bumpers	Heinz	Pryor
Burdick	Hollings	Reid
Byrd	Humphrey	Riegle
Chafee	Inouye	Robb
Coats	Jeffords	Rockefeller
Cochran	Johnston	Roth
Cohen	Kassebaum	Rudman
Conrad	Kasten	Sanford
Cranston	Kennedy	Sarbanes
D'Amato	Kerrey	Sasser
Danforth	Kerry	Shelby
Daschle	Kohl	Simon
DeConcini	Lautenberg	Simpson
Dixon	Leahy	Specter
Dodd	Levin	Stevens
Dole	Lieberman	Thurmond
Domenici	Lugar	Warner
Durenberger	Matsunaga	Wilson
Exon	McCain	Wirth
Ford	McConnell	

##### NAYS—10

Armstrong	Helms	Symms
Boren	Lott	Wallop
Burns	Mack	
Grassley	McClure	

##### NOT VOTING—1

Gramm

So the nomination was confirmed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. SARBANES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the President will be immediately notified of the Senate's action on this nomination.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

#### FUNERAL OF IMRE NAGY, FORMER PRIME MINISTER OF HUNGARY—SENATE CONCURRENT RESOLUTION 44

Mr. DODD. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of Senate Concurrent Resolution 44, a concurrent resolution that I submitted earlier today concerning the former Prime Minister of Hungary, Imre Nagy and other heroes of the 1956 Hungarian revolution.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 44) to express the sense of the Congress concerning the funeral of Imre Nagy, the former Prime Minister of Hungary, and other heroes of the 1956 revolution in Hungary.

The PRESIDING OFFICER. Is there objection to the present consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. DODD. Mr. President, very briefly, the day after tomorrow an extraordinary event will take place at Budapest, Hungary. The remains of the former Prime Minister of Hungary's revolutionary government of 1956, Imre Nagy, and those of his close associates, will be laid to rest in Budapest at a dignified public funeral. This is a fitting occasion for the United States Congress to once again express its respect to the memory of those executed for their roles in the 1956 Hungarian Revolution.

The funeral is under the control of the families of the victims, among them the daughter of Imre Nagy, assisted by the Independent Committee for Historical Justice led by a close associate of Prime Minister Nagy. They have published a request on the desir-

able style and spirit of Friday's events. They called for a day of national reconciliation, grief and reverence, free of political rancor or sloganeering.

This resolution, Mr. President, has been written with respect for that request.

My staff has also contacted a very good friend of mine, Gen. Bela Kiraly, a retired professor of history of the City University of New York. General Kiraly was commander in chief of the Revolutionary Militia in 1956, and a close associate of Prime Minister Nagy, and for a few days acting Minister of Defense of the Nagy government. He was the highest ranking official of that government who managed to escape to the West. He is now back in Budapest for the first time since 1956, invited by the victims' families, and he will be the keynote speaker at the rally preceding the funeral.

General Kiraly will be accompanied, I might add, by a distinguished resident of I might say the presiding officer's and my home State of Connecticut, Janos Decsy, who is a professor at the University of Hartford in Connecticut, who was one of the young lieutenants in 1956.

It is a remarkable event. These are two people—Janos Decsy was severely wounded by the Soviet firearms, spent a number of years in prison and Soviet prison camps, escaped, and came to this country. The fact that the Hungarian Government is allowing Janos Decsy and Bulcsu Veress to return to participate in the formal burial of Prime Minister Nagy is really a remarkable event. On Friday that event will occur.

I would be remiss if I did not point out that while I was a very young man at the time I remember those events in the fall of 1956 very clearly. My father had been a Member of the House of Representatives, and spoke out very eloquently about the events surrounding that revolution. I am very fortunate indeed to have, coincidentally, as a member of my staff a man by the name of Bulcsu Veress, who was also a young man and participated in that revolution in 1956 as an adolescent who has come to this country. I have had the good fortune of having him as a member of my staff for over 10 years.

So to our friends in Hungary, to Bela Kiraly, Janos Decsy, to the families of the victims who were buried in unmarked graves after being hung without any identification of their remains, the fact they will receive a formal, dignified funeral is really a remarkable event. The fact that we in the Senate in this body will take note of that event and recognize that event this coming Friday is something that I think is very worthwhile, and I am very proud to offer the resolution.

We hope this will receive the unanimous support of our colleagues.

Mr. DOMENICI. Mr. President, I compliment the distinguished Senator from Connecticut [Mr. Dodd] for his statement here today regarding the Hungarian heroes of the past, and I look forward to being able to support this institution going on record, with reference to the occasion he described.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

#### S. CON. RES. 44

Whereas on October 23, 1956, students, workers, and other citizens of Budapest, Hungary, united in a peaceful demonstration to express the desire of the Hungarian people for independence and freedom;

Whereas after security forces fired on the crowd, the demonstration turned into an uprising and freedom fight;

Whereas days of heroic fighting by the people of Hungary led to a temporary ceasefire and the formation of an interim government based on the consent of the people and led by Prime Minister Imre Nagy;

Whereas the short-lived government of Imre Nagy started the first steps toward a free and independent Hungary with a multiparty system based on the idea of popular sovereignty;

Whereas on November 4, 1956, an overwhelming Soviet force entered Hungary and in fierce, bloody fighting suppressed the revolution and restored Soviet domination over Hungary;

Whereas in the course of such fighting thousands of freedom-loving Hungarians lost their lives;

Whereas Prime Minister Imre Nagy and his close associates were taken into Soviet custody, and later tried and executed under false charges;

Whereas brutal and bloody retribution following the extinction of the Hungarian revolution, and hundreds of ordinary freedom fighters were executed in addition to the top leaders of such revolution;

Whereas the present Government of Hungary has announced a radical reform of the entire political and economic system of the country;

Whereas the stated aim of such reforms is the establishment of a free and independent Hungary, with a pluralistic, multiparty political system where human rights will be respected;

Whereas the Hungarian Government has identified the secret burial sites of the executed revolutionaries of 1956, and allows their exhumation and proper public interment;

Whereas on June 16, 1989, in a public, televised funeral, the remains of Prime Minister Imre Nagy and four of his closest associates, as well as a casket representing all of the other executed victims, will be buried in Budapest with full dignity;

Whereas the Government of Hungary has announced its intention to declare the innocence of Imre Nagy and his associates;

Whereas the current Prime Minister of Hungary, the Speaker of the Parliament, and other officials of the Hungarian Government expressed an intent to attend the funeral;

Whereas hundreds of American citizens, who are former Hungarian freedom fighters, are traveling to Budapest to attend the funeral ceremonies and pay respect to the heroes of 1956;

Whereas the Hungarian revolution of 1956 was a watershed event in modern history and represented the first major sign of the inevitability of the destruction of Stalinism; and

Whereas it is the view of the people and the Government of the United States that the cause of human freedom is universal and that the Hungarian freedom fighters fought and died for the liberty of mankind: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring), That—*

(1) it is the sense of the Congress that the funeral of Imre Nagy and other heroes of the Hungarian revolution of 1956 is a significant symbol of reconciliation and reform in Hungary; and should give further strength to the forces of democracy and pluralism in Hungary;

(2) Congress expresses sincere respect for the memory of Imre Nagy and all of the martyrs of the Hungarian revolution of 1956; and

(3) the Secretary of the Senate is authorized and requested to send a copy of this concurrent resolution to the Government of Hungary.

Mr. DODD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, parliamentary inquiry: Is this an appropriate time for a Senator to ask for 5 minutes as if in morning business?

The PRESIDING OFFICER. Yes. That request is entirely in order.

Mr. DOMENICI. I so request, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. I thank the Chair. (The remarks of Mr. DOMENICI pertaining to the introduction of S. 1187 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### PREDICTING INFLATION IN THE FUTURE

Mr. DOMENICI. Mr. President, I do not know if it has been noted in the Senate that recently the Federal Reserve Board has made a rather significant finding. The Chairman of the Federal Reserve Board, for years, has been wondering if some formula could be arrived at from action in the marketplace, action principally related to the flow or velocity of money in the American marketplace, to see if you could predict inflation in the future. That has been something bothering people forever. We have guesstimates on it, and maybe their announcement recently that they may have found a

formula, based upon records that have been compiled for 30 years of activity, may indeed in the future permit us to predict, with a reasonable amount of accuracy, whether inflation is active, alive and not in the American economy.

I am hopeful that that release by the Federal Reserve Board and their ideas of an actual mathematical formula measuring the velocity of money in the marketplace as a precursor to inflation, I am hopeful that it will work. I look forward to learning more about it, and I hope that the Senate and the committees of the Senate will take cognizance of this rather historic event. Hopefully, it will work.

#### BILL HELD AT DESK—S. 1183

Mr. DODD. Mr. President, I ask unanimous consent that S. 1183, a bill introduced earlier today by Senator KENNEDY, for himself, Mr. MURKOWSKI, Ms. MIKULSKI, Mr. MOYNIHAN, Mr. DURENBERGER, Mr. SIMON, Mr. LEVIN, and Mr. DIXON, to provide for certain assistance to Poland and Hungary, be held at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### U.S.S. "EDSON" (DD946) TO BE TRANSFERRED TO SEA-AIR-SPACE MUSEUM IN NEW YORK—S. 1184

Mr. DOLE. Mr. President, I send a bill to the desk on behalf of Senators D'AMATO and MOYNIHAN and ask for its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1184) to allow the obsolete destroyer U.S.S. *Edson* (DD946) to be transferred to the Intrepid Sea-Air-Space Museum in New York before the expiration of the otherwise applicable 60-day congressional review period.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1184

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That clauses (2) and (3) of section 7308(c) of title 10, United States Code, shall not apply with respect to the transfer by the Secretary of the Navy under section 7308(a) of such title of the obsolete destroyer U.S.S. *Edson* (DD 946) to the Intrepid Sea-Air-Space Museum,*

a nonprofit corporation organized under the laws of the State of New York.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DODD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### APPOINTMENT OF CONFEREES—H.R. 1722

Mr. DODD. Mr. President, I move that the Senate insist on its amendments to H.R. 1722, the natural gas deregulation bill, and request a conference with the House on the disagreeing votes of the two Houses and the Chair be authorized to appoint conferees.

The motion was agreed to, and the Presiding Officer [Mr. LIEBERMAN] appointed Mr. JOHNSTON, Mr. BUMPERS, Mr. FORD, Mr. McCLURE, and Mr. DOMENICI conferees on the part of the Senate.

#### ORDER FOR STAR PRINT—S. 1132

Mr. DODD. Mr. President, I ask unanimous consent that S. 1132 be star printed to reflect the changes I now send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### COQUILLE TRIBE OF INDIANS TRUST RELATIONSHIP ACT

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 122, H.R. 881, a bill to restore Federal recognition to the Coquille Tribe of Washington.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 881) to provide for restoration of the Federal trust relationship with, and assistance to, the Coquille Tribe of Indians and the individual members consisting of the Coquille Tribe of Indians, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. HATFIELD. Mr. President, today is an important day for Oregon's Coquille Indians: the Senate has passed H.R. 881, the Coquille Restoration Act, into law. When the President signs this legislation, 35 years of injustice will be brought to a close.

All western Oregon tribes had their tribal status revoked by the Termination Act of 1954. This misguided approach was intended to incorporate the western Oregon tribes into the mainstream American society. The results, however, were disastrous. Oregon Indians were unable to inte-

grate themselves into the dominant white culture, and they lost almost everything. The Coquilles were no exception. Despite this adversity they have managed to remain a cohesive group and preserve their cultural heritage through the customs, traditions, and language of their ancestors. Their unity in the face of tremendous obstacles is nothing short of inspirational.

Beginning in 1977, Congress began restoring recognition to the terminated tribes, and I am proud to have been a part of this effort. The Coquille restoration follows restoration of the Confederated Tribe of Siletz Indians (1977), the Cow Creek Band of Umpqua Indians (1982), the Confederated Tribes of the Grand Ronde Community (1983), the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (1984), and the Klamath Tribe (1986). Restoration of recognition for these other tribes has improved medical and social services, and increased economic opportunities. Most importantly, restoration has reaffirmed tribal sovereignty in their relationship with the U.S. Government. The Coquille Tribe will now join this list.

Mr. President, the Coquille Restoration Act's passage today is very timely. The chairman of the Coquille Tribe, Wilfred Wasson, has been very sick with cancer. Will has been an inspiration not only to me, but to all who come in contact with him. He has worked for 35 years to see this bill come to reality, and I salute his efforts and his commitment.

Let me also thank Senators INOUE and MCCAIN for their leadership on this issue.

Mr. PACKWOOD. Mr. President, I am pleased that the Senate is taking this important step today to recognize the Coquille Indian Tribe. Passage of this bill will be a long overdue act of justice. The bill has moved quickly through the House, and I am encouraged that we will see it become law in this Congress.

The Coquille Tribe is the last to seek restoration of the numerous Oregon tribes terminated by the U.S. Government by two acts of Congress in 1954. Oregon Indians suffered disproportionately under the Termination Acts of 1954. Sixty percent of all the tribes terminated nationwide were Oregon tribes. Sixty-three percent of the Indian land base affected was in Oregon. The consequences of termination were disastrous. The Western Oregon Termination Act ended Federal services to tribal members and led to the removal from trust and eventual sale of all Coquille land.

We now have an opportunity to right this wrong by once again federally recognizing the Coquille Tribe, thereby reinstating Indian health and education services denied the Coquilles as terminated Indians. Econom-

ic development opportunities available to federally recognized Indians will now be opened to the Coquilles and will pave the way for development of tribal enterprises. These tribal enterprises will provide employment to tribal members and non-Indians and contribute to the over-all economy of the region.

The Coquille restoration effort enjoys broad support. All members of the Oregon congressional delegation support the restoration, as does the Governor of the State. The effort is supported by national Indian groups as well as local government, tribes, and businesses.

Mr. President, I hope we can move quickly now to federally recognize the Coquille Tribe so that we can provide its members the opportunity to overcome the adverse effects of 34 years of termination and enjoy the fruits of a government-to-government relationship with the United States, a strengthened tribal identity and economic self-sufficiency.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 881) was ordered to a third reading, was read the third time, and passed.

Mr. DODD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### NATIONAL SCLERODERMA AWARENESS WEEK

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 274, a joint resolution to designate the week beginning June 11, 1989, as "National Scleroderma Awareness Week" just received from the House of Representatives.

The PRESIDING OFFICER. The joint resolution will be stated by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 274) to designate the week beginning June 11, 1989, as "National Scleroderma Awareness Week."

The PRESIDING OFFICER. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. The joint resolution is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 274) was ordered to a third reading, was read the third time, and passed.

The preamble was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### MEASURE PLACED ON THE CALENDAR

Mr. DODD. Mr. President, I ask unanimous consent that H.R. 2281, relating to school dropouts, be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### EXECUTIVE SESSION

##### EXECUTIVE CALENDAR

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations:

Calendar 170, John D. Negroponte to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Mexico;

Calendar 172, Bernard W. Aronson to be Assistant Secretary of State;

Calendar 173, John H. Kelly to be an Assistant Secretary of State;

Dale T. Tate to be an Assistant Secretary of Labor reported today by the Committee on Labor and Human Resources;

Kathleen M. Harrington to be an Assistant Secretary of Labor reported today by the Committee on Labor and Human Resources;

Jennifer L. Dorn to be an Assistant Secretary of Labor reported today by the Committee on Labor and Human Resources; and

Robert P. Davis to be Solicitor for the Department of Labor reported today by the Committee on Labor and Human Resources.

I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

##### DEPARTMENT OF STATE

John D. Negroponte, of New York, a career member of the Senior Foreign Service, class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Mexico.

Bernard William Aronson, of Maryland, to be an Assistant Secretary of State.

John Hubert Kelly, of Georgia, a career member of the Senior Foreign Service, class of Minister-Counselor, to be an Assistant Secretary of State.

#### DEPARTMENT OF LABOR

Dale Triber Tate, of the District of Columbia, to be an Assistant Secretary of Labor.

Kathleen M. Harrington, of the District of Columbia, to be an Assistant Secretary of Labor.

Jennifer Lynn Dorn, of Maryland, to be an Assistant Secretary of Labor.

Robert P. Davis, of Virginia, to be Solicitor for the Department of Labor.

#### JOINT REFERRAL

Mr. DODD. Mr. President, as in executive sessions, I ask unanimous consent that the nomination of Constance Bastine Harriman, of Maryland, to be Assistant Secretary for Fish and Wildlife, Department of the Interior, sent to the Senate by the President on June 6, 1989, be referred jointly to the Committees on Energy and Natural Resources and Environment and Public Works.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now resume legislative session.

#### GOVERNING INTERNATIONAL FISHERY AGREEMENT BETWEEN THE UNITED STATES AND THE HOME GOVERNMENT OF THE FAROE ISLANDS AND THE GOVERNMENT OF DENMARK—MESSAGE FROM THE PRESIDENT—PM 50

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which, pursuant to 16 U.S.C. 1823(b), was referred jointly to the Committee on Commerce, Science, and Transportation and the Committee on Foreign Relations:

*To the Congress of the United States:*

In accordance with the Magnuson Fishery Conservation and Management Act of 1976 (Public Law 94-265; 16 U.S.C. 1801 et seq.), I transmit herewith an agreement effected by exchange of notes at Washington on March 28, 1989, extending for the period of 2 years from July 1, 1989, until July 1, 1991, and amending to conform with current U.S. law, the Governing International Fishery Agreement between the Government of the United States of America of the one part and the Home Government of the Faroe Islands and the Government of Denmark of the other part concerning Faroese Fishing in Fisher-

ies off the Coasts of the United States, signed at Washington on June 11, 1984. The exchange of notes, together with the present agreement, constitute a governing international fishery agreement within the meaning of section 201(c) of the act.

U.S. fishing industry interests have urged prompt consideration of this agreement and, similarly, I request the Congress give favorable consideration to this agreement at an early date to avoid disruption of cooperative ventures.

Since 60 calendar days of continuous session, as required by the legislation, will not be available before the current agreement is scheduled to expire, I recommend the Congress consider passage of a joint resolution.

GEORGE BUSH.

THE WHITE HOUSE, June 14, 1989.

#### MESSAGES FROM THE HOUSE

At 10:14 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 274. Joint resolution to designate the week beginning June 11, 1989, as "National Scleroderma Awareness Week".

At 5:37 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House of Representatives having proceeded to reconsider the bill (H.R. 2) to amend the Fair Labor Standards Act of 1938 to restore the minimum wage to a fair and equitable rate, and for other purposes, returned by the President of the United States with his objections, to the House of Representatives, in which it originated, and that the said bill do not pass, two-thirds of the House of Representatives not agreeing to pass the same.

The message also announced that the House agrees to the amendments of the Senate numbered 6 and 7 to the bill (H.R. 1426) to amend the Public Health Service Act to make technical corrections relating to subtitles A and G of title II of the Anti-Drug Abuse Act of 1988, and for other purposes; and that the House disagrees to the amendments of the Senate numbered 1, 2, 3, 4, 5, and 8 to the said bill.

The message further announced that the House disagrees to the amendments of the Senate to the bill (H.R. 2072) making dire emergency supplemental appropriations and transfers, urgent supplementals, and correcting enrollment errors for the fiscal year ending September 30, 1989, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. WHITTEN, Mr. NATCHER, Mr. SMITH of

Iowa, Mr. YATES, Mr. OBEY, Mr. ROYBAL, Mr. BEVILL, Mr. MURTHA, Mr. TRAXLER, Mr. LEHMAN of Florida, Mr. DIXON, Mr. FAZIO, Mr. HEFNER, Mr. CONTE, Mr. McDADE, Mr. COUGHLIN, Mr. REGULA, Mrs. SMITH of Nebraska, Mr. EDWARDS of Oklahoma, Mr. GREEN, and Mr. ROGERS as managers of the conference on the part of the House.

At 6:23 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has agreed to the concurrent resolution (S. Con. Res. 19) to authorize printing of a collection of the inaugural addresses of the Presidents of the United States, with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1502. An act to authorize the appropriation of funds to the District of Columbia for additional officers and members of the Metropolitan Police Department of the District of Columbia, and to provide for the implementation in the District of Columbia of a community-oriented policing system;

H.R. 2042. An act to amend title V of the Agricultural Act of 1949 to allow producers to provide the appropriate county committees with actual yields for the 1989 and subsequent crop years, and for other purposes;

H.R. 2281. An act to amend the Elementary and Secondary Education Act of 1965 to extend the authorization for certain school dropout demonstration programs; and

H.R. 2469. An act to limit a previous owner's right of first refusal in the case of fraud or resale for sales of farm property by the Farmers Home Administration, and the Farm Credit System.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 150. Concurrent resolution authorizing the printing of a collection of statements in tribute to the late Representative Claude Denson Pepper.

#### MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 1502. An act to authorize the appropriation of funds to the District of Columbia for additional officers and members of the Metropolitan Police Department of the District of Columbia, and to provide for the implementation in the District of Columbia of a community-oriented policing system; to the Committee on Governmental Affairs.

H.R. 2042. An act to amend title V of the Agricultural Act of 1949 to allow producers to provide the appropriate county committees with actual yields for the 1989 and subsequent crop years, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 2469. An act to limit a previous owner's right of first refusal in the case of

fraud or resale for sales of farm property by the Farmers Home Administration, and the Farm Credit System; to the Committee on Agriculture, Nutrition, and Forestry.

### MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2281. An act to amend the Elementary and Secondary Education Act of 1965 to extend the authorization for certain school dropout demonstration programs.

### ENROLLED JOINT RESOLUTION SIGNED

The ACTING PRESIDENT pro tempore (Mr. REID) reported that on today, June 14, 1989, he had signed the following enrolled joint resolution; which had previously been signed by the Speaker of the House:

S.J. Res. 63. Joint resolution designating June 14, 1989, as "Baltic Freedom Day", and for other purposes.

### ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, June 14, 1989, he had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 63. Joint resolution designating June 14, 1989, as "Baltic Freedom Day", and for other purposes.

### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BENTSEN, from the Committee on Finance without amendment:

S. 1185. An original bill to amend the Internal Revenue Code of 1986 to allow a credit for health insurance premium costs, to make the credit for dependent care refundable, to simplify the antidiscrimination rules applicable to certain employee benefits (Rept. No. 101-51).

### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources:

Dale Triber Tate, of the District of Columbia, to be an Assistant Secretary of Labor;

Kathleen M. Harrington, of the District of Columbia, to be an Assistant Secretary of Labor;

Jennifer Lynn Dorn, of Maryland, to be an Assistant Secretary of Labor; and

Robert P. Davis, of Virginia, to be Solicitor for the Department of Labor.

Mr. KENNEDY. Mr. President, for the Committee on Labor and Human Resources, I report favorably three nomination lists in the Public Health Service which were printed in full in the CONGRESSIONAL RECORDS of March

9 and April 17, 1989, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar, that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. COATS:

S. 1174. A bill to amend title XVIII of the Social Security Act and the Internal Revenue Code of 1986 to repeal the Medicare supplemental premium and certain Medicare part B benefits added by the Medicare Catastrophic Coverage Act of 1988, and for other purposes; to the Committee on Finance.

By Mr. JOHNSTON:

S. 1175. A bill to provide for the conveyance of certain mineral interests of the United States in property in Louisiana to the record owners of the surface of that property; to the Committee on Energy and Natural Resources.

By Ms. MIKULSKI (for herself and Mr. SARBANES):

S. 1176. A bill to require the Nuclear Regulatory Commission to establish consistent procedures for permitting the restarting of nuclear power plants that have been shut down for safety reasons; to the Committee on Environment and Public Works.

By Mr. THURMOND:

S. 1177. A bill to amend title 36 of the United States Code, relating to the United States flag, to clarify and more clearly define the methods and restrictions for display of the United States flag; to the Committee on the Judiciary.

By Mr. MITCHELL (for himself, Mr. LAUTENBERG, Mr. CHAFEE, Mr. MOYNIHAN, Mr. COHEN, Mr. LIEBERMAN, Mr. D'AMATO, Mr. SARBANES, Mr. BRADLEY, Mr. FOWLER, Mr. DODD, Mr. GRAHAM, and Mr. PELL):

S. 1178. A bill to improve and expand programs for the protection of marine and coastal waters; to the Committee on Environment and Public Works.

By Mr. LAUTENBERG (for himself, Mr. MITCHELL, Mr. CHAFEE, Mr. MOYNIHAN, Mr. LIEBERMAN, Mr. GRAHAM, Mr. BRADLEY, Mr. D'AMATO, Mr. PELL, Mr. FOWLER, Mr. DODD, Mr. SARBANES, and Mr. COHEN):

S. 1179. A bill to establish a comprehensive marine pollution restoration program, to amend the Federal Water Pollution Control Act and the Marine Protection Research, and Sanctuaries Act, and for other purposes; to the Committee on Environment and Public Works.

By Mr. HOLLINGS (for himself, Mr. GORE, Mr. DANFORTH, Mr. PRESSLER, and Mr. COCHRAN):

S. 1180. A bill to authorize the President to appoint Rear Admiral Richard Harrison Truly to the Office of Administrator of the

National Aeronautics and Space Administration; to the Committee on Commerce, Science, and Transportation.

By Mr. HEINZ (for himself and Mr. WIRTH):

S. 1181. A bill to amend the Solid Waste Disposal Act to require producers and importers of lubricating oil to recycle a certain percentage of used oil each year, to require the Administrator of the Environmental Protection Agency to establish a recycling credit system for carrying out such recycling requirement, to establish a management and tracking system for such oil, and for other purposes; to the Committee on Environment and Public Works.

By Mr. KENNEDY:

S. 1182. A bill to amend the Fair Labor Standards Act of 1938 to restore the minimum wage to a fair and equitable rate, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. KENNEDY (for himself, Mr. MURKOWSKI, Ms. MIKULSKI, Mr. MOYNIHAN, Mr. DURENBERGER, Mr. SIMON, Mr. LEVIN, and Mr. DIXON):

S. 1183. A bill to provide for certain forms of assistance to Poland and Hungary to encourage the process of democratic reforms in those countries; ordered held at the desk.

By Mr. DOLE (for Mr. D'AMATO (for himself and Mr. MOYNIHAN)):

S. 1184. A bill to allow the obsolete destroyer U.S.S. *Edson* (DD 946) to be transferred to the Intrepid Sea Air Space Museum in New York before the expiration of the otherwise applicable 60-day congressional review period; considered and passed.

By Mr. BENTSEN, from the Committee on Finance:

S. 1185. An original bill to amend the Internal Revenue Code of 1986 to allow a credit for health insurance premium costs, to make the credit for dependent care refundable, to simplify the antidiscrimination rules applicable to certain employee benefits; placed on the calendar.

By Mr. MURKOWSKI:

S. 1186. A bill to amend the Immigration and Nationality Act to revise certain health requirements regarding the admission of certain disabled veterans and to revise the period of active military service required for a veteran to qualify for naturalization; to the Committee on the Judiciary.

By Mr. DOMENICI:

S. 1187. A bill to repeal the supplemental Medicare premium, to modify certain benefits added by the Medicare Catastrophic Coverage Act of 1988 and improve the financing of such benefits and for other purposes; to the Committee on Finance.

By Mr. MURKOWSKI:

S. 1188. A bill to amend title 38, United States Code, and the Internal Revenue Code of 1986 regarding the use of Internal Revenue Service and Social Security Administration data for income verification for purposes of laws administered by the Department of Veterans' Affairs; to the Committee on Finance.

By Mr. KERRY:

S. 1189. A bill to amend the Coastal Zone Management Act of 1972 to require State coastal zone management agencies to prepare and submit for the approval of the Secretary of Commerce plans for the improvement of coastal zone water quality, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. PELL:

S. 1190. A bill to establish in the Department of Education an Office of Correctional

Education, and for other purposes; to the Committee on Labor and Human Resources.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DODD (for himself, Mr. DOLE, and Mr. KENNEDY):

S. Con. Res. 44. Concurrent resolution to express the sense of the Congress concerning the funeral of Imre Nagy, the former Prime Minister of Hungary, and other heroes of the 1956 revolution in Hungary; considered and agreed to.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COATS:

S. 1174. A bill to amend title XVIII of the Social Security Act and the Internal Revenue Code of 1986 to repeal the Medicare supplemental premium and certain Medicare part B benefits added by the Medicare Catastrophic Coverage Act of 1988, and for other purposes; to the Committee on Finance.

##### MEDICARE CATASTROPHIC COVERAGE IMPROVEMENT ACT

Mr. COATS. Mr. President, I rise today to introduce legislation that will revise the Medicare Catastrophic Coverage Act [MCCA] so that it provides true acute care protection at a price that seniors can afford.

The MCCA, in its present form, expands Medicare to provide many more services than the originally intended purpose of this legislation, which was to shield the elderly from the financial devastation of a serious and prolonged illness or accident. While these additional Medicare and Medicaid benefits will help some individuals, they are expensive; and we are requiring seniors to pay for them right along with the basic catastrophic benefits.

I believe that the elderly should have peace-of-mind protection against the possibility of an acute health crisis, and I believe Congress started out on the right track on this question. Now that we have had time to evaluate the long-term impact of this law, I believe we need to change it and go back to a package of benefits that more closely resembles the original idea that many Members of the 100th Congress shared with former HSS Secretary Otis Bowen. The MCCA as it stands today is not true to that original idea, and it is not fair to our senior citizens to impose a heavy tax burden to cover benefits never intended or sought by most seniors.

Back in January 1987 when I discussed with Secretary Bowen my interest in giving the elderly peace-of-mind protection against catastrophic illness, I had in mind a group of benefits that would expand hospitalization to full year coverage and put a cap on out-of-

pocket expenses for Medicare covered hospital and physician services. I fashioned a bill in conjunction with HHS and was proud that key Members of the Republican leadership of the House and the health legislative committees joined me in that effort.

Right from the start, there were others who were not satisfied with this modest but cost-efficient approach. They saw this as an opportunity to greatly expand Medicare without budget consequences, passing on the extra costs to seniors in the form of an income-based surtax. In July 1987, when the House voted on this issue, the deluxe model with all the expensive extras passed. I voted against that bill and voted for the no-frills version that developed from the bill I had introduced in February 1987. Although the so-called Michel substitute garnered 190 votes, it did not prevail.

Mr. President, the Michel substitute was an honest, effective piece of legislation when it almost passed in 1987, and it looks even better now. It is the basis of the Medicare Catastrophic Coverage Improvement Act of 1989 that I am introducing today.

My bill retains the positive features of the MCCA for part A hospital benefits, limits out-of-pocket expenses for Medicare covered part B services and modifies the part B catastrophic premium. These changes make it possible to eliminate the onerous surcharge that is required by the MCCA. It returns us to the original concept of the MCCA: namely, peace-of-mind catastrophic coverage at a price that seniors can afford.

The second major feature of this bill is a Medicaid prescription drug benefit that will cover those 65 and over with incomes below 125 percent of the Federal poverty level. This is a substantial improvement over existing law because the benefits cover the poorest elderly. The drug benefit in the present law not only will give millionaires the same coverage as the disadvantaged, it also will cover people under 65 who are eligible for disability payments. Of course, the disabled should be treated with compassion, and perhaps it is wise public policy to cover their medication. However, I do not believe it is fair for seniors to pay exclusively for such a benefit.

Finally, this bill addresses the urgent need for action to make long-term care more affordable. It is widely recognized that the elderly and their families fear the huge cost of long-term care more than any other old age crisis. The escalating cost of nursing home care and the need for more and better home care are challenges that cannot be ignored.

The second title of this bill makes changes in the tax laws that will encourage insurance companies to offer more attractive long-term care policies. A wider variety of more afford-

able policies have become available in the last several years, and this is a trend that needs to be encouraged. This bill also makes it possible to transfer assets from traditional savings vehicles, such as IRA's and whole life policies, to pay for long-term care insurance.

I believe that a competitive, innovative marketplace should be the cornerstone of our long-term care policy. The Federal Government can play a constructive supporting role, but it would be a mistake to try to concoct a centrally controlled Federal program. In order to be successful, our long-term care strategy needs to take advantage of the flexibility and resources of the private sector. The changes that I am proposing are a first step in this direction.

In summary, Mr. President, the Medicare Catastrophic Coverage Improvement Act that I am introducing today makes the present law simpler and less expensive while it preserves the basic peace-of-mind protection that senior citizens deserve, and it points the way to more affordable and innovative long-term care.

By Ms. MIKULSKI (for herself and Mr. SARBANES):

S. 1176. A bill to require the Nuclear Regulatory Commission to establish consistent procedures for permitting the restarting of nuclear powerplants that have been shut down for safety reasons; to the Committee on Environment and Public Works.

##### NUCLEAR POWERPLANT SAFETY ACT

● Ms. MIKULSKI. Mr. President, today I am introducing with Senator SARBANES a bill requiring the Nuclear Regulatory Commission to establish criteria for the restart of nuclear powerplants that have been shut down for safety reasons. I strongly believe the NRC ought to have clear and concrete steps for determining whether or not a nuclear powerplant is safe to be restarted. Establishing criteria based on sound safety and management principles will instill confidence in the process and ensure that consistent and appropriate procedures are followed.

This issue was first brought to my attention after the shutdown of the Peachbottom Nuclear Powerplant in Pennsylvania by the NRC. I asked the NRC what criteria would be used to decide when the powerplant was safe and ready to being operations again and discovered that the NRC did not have specific criteria for making such a determination.

Last year Senator SARBANES and I asked GAO to take a look at NRC restart procedures. GAO found that NRC had issued staff guidelines which are the equivalent of recommendations and do not include provisions for public participation, independent review, or review of utility corrective

actions. I strongly believe these are important elements that should be well established in NRC policy.

My legislation simply requires the NRC to establish a standing set of criteria that must be satisfied before a nuclear powerplant is permitted to restart. It also requires that provisions for public participation, independent review, and inspection and review of the utilities corrective action plan be included in the criteria.

Establishing restart criteria will make clear to the public and to the utility companies that specific procedures are being followed to insure the safety and soundness of the restart process.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this time.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1176

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Nuclear Power Plant Safety Act of 1989".

#### SEC. 2. NRC TO ESTABLISH CONSISTENT PROCEDURES.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this act, the Nuclear Regulatory Commission (referred to as the "Commission") shall publish in the Federal Register regulations setting out procedures for permitting the restarting of a nuclear power plant (or part thereof) that has been shut down (whether or not by order of the Commission) for safety reasons.

(b) DEFINITION.—For the purposes of subsection (a) a facility shall be considered to be shut down for safety reasons when it has been shut down upon the detection of a defect or suspected defect in equipment, operating procedures, maintenance, personnel practices, management, or other aspect of the facility that poses such a risk to safe operation of the facility that action on the defect cannot prudently be delayed until the next scheduled shutdown for routine inspection, maintenance, and repair.

(b) MINIMUM CRITERIA.—The regulations issued pursuant to subsection (a) shall include provision for—

(1) identification of the defects in the equipment, operating procedures, maintenance, personnel practices, management, and other aspects of a nuclear power plant that must be corrected;

(2) preparation by the utility and review and approval by the Commission of a plan to correct the defects;

(3) inspection by the Commission of corrections made by the utility prior to restarting the facility and, when appropriate, periodically thereafter;

(4) public meetings and consideration of written comments from the public at significant stages of the proceeding; and

(5) independent evaluation and comment on Commission actions relating to applications for permission to restart a facility.●

By Mr. THURMOND:

S. 1177. A bill to amend title 36 of the United States Code, relating to the U.S. flag, to clarify and more clearly

define the methods and restrictions for display of the U.S. flag; to the Committee on the Judiciary.

#### DISPLAY OF THE U.S. FLAG

Mr. THURMOND. Mr. President, today, our Nation is celebrating Flag Day. Flag Day was established in 1949 as an observance of the date, June 14, 1777, when the Continental Congress adopted the Stars and Stripes as this Nation's official flag. On this special occasion, I am pleased to introduce legislation concerning the proper use and display of the flag of the United States.

It is appropriate that we continuously remind ourselves about the proper uses and manners of display for our flag. The American Legion recognized the need for revising Federal law as it relates to flag use and display. Today, I am pleased to introduce this bill which will make those changes recommended by the American Legion.

Mr. President, this legislation makes revisions to chapter 10 of title 36 which addresses flag usage. This chapter of the code is not intended to prescribe conduct, but is merely advisory.

The measure amends the code by listing additional days on which the flag should be displayed. The new days include Thomas Jefferson's birthday, Flag Week, and other days of national observance. In addition, the public holiday of the birthday of Martin Luther King, Jr., is listed.

The bill also amends existing law with respect to the position and manner of display of our flag. It pays special attention to how the flag should be flown when flown with flags of other nations and to the proper times and durations for flying the flag at half-staff.

Finally, this measure clarifies the wording of the present law. It makes the guidelines for using the flag understandable to all the people who may fly the flag or want to incorporate its design into some other usage. For example, the bill addresses the care which should be taken by people who wear clothing upon which the flag is embroidered or attached.

The U.S. flag represents our great Nation in a visible manner. Its proper and respectful display and usage should be known and observed by all Americans. The legislation I have proposed will help to accomplish this goal. It will make clearer the rules of displaying our flag.

In closing, our flag embodies many courageous acts by brave men and women throughout the history of our Nation. It was designed to commemorate the great honor that patriotic Americans have exemplified in life and death, in war and peace. The Stars and Stripes certainly deserves great respect and should always be treated with dignity. In a time when the flag is placed on the ground and trampled in the name of art, proper

use and display of the flag must now be emphasized so that we, as Americans, do not lose sight of the respect due our flag.

For these reasons, I urge my colleagues to support this measure.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1177

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. TIME AND OCCASIONS FOR DISPLAY.

Section 174(d) of title 36, United States Code, is amended by—

(1) inserting "Birthday of Martin Luther King, Jr., third Monday in January;" after "January 1;"

(2) inserting "Thomas Jefferson's Birthday, April 13; Loyalty Day-Law Day United States of America, May 1;" after "Easter Sunday (variable);";

(3) inserting "National Maritime Day, May 22;" after "second Sunday in May;"

(4) inserting "Flag Week, week of June 14; Father's Day, third Sunday in June;" after "June 14;"

(5) inserting "Aviation Day, August 19;" after "July 4;" and

(6) inserting "Citizenship Day, September 17; American Gold Star Mothers Day, last Sunday in September;" after "September 17;"

#### SEC. 2. POSITION AND MANNER OF DISPLAY.

(a) FLAGS AND PENNANTS OF STATES, CITIES, LOCALITIES, AND CORPORATIONS.—Subsection (f) of section 175 of title 36, United States Code, is amended by—

(1) inserting "or pennants" after "flags";

(2) striking "or localities, or pennants of societies" and inserting "localities, societies, or corporations"; and

(3) inserting ", that is the observer's left, when the flags are flown in a straight line formation" after "flag's right".

(b) FLAGS OF OTHER NATIONS.—Subsection (g) of section 175 of title 36, United States Code, is amended by—

(1) inserting "(1)" after "(g)"; and

(2) adding at the end thereof the following:

"(2) When the flag of the United States is flown in a straight line formation with flags of other nations—

"(A) the flag of the United States should be on its own right; and

"(B) the flags of other nations are displayed on the observer's right and in alphabetical order from left to right.

In any other situation when the flag of the United States is flown with the flags of other nations the flag of the United States should be placed in a position of most prominence."

(c) DISPLAY OF FLAG AT HALF-STAFF.—Subsection (m) of section 175 of title 36, United States Code, is amended by—

(1) designating the text of such subsection as paragraph (3); and

(2) inserting after "(m)" the following:

"(1) The flag displayed at half-staff is a sign of national mourning and a mark of respect to the memory of principal figures of the United States or State government.

"(2) The flag should not be displayed at half-staff—

"(A) except as provided in this subsection or unless such display is pursuant to a special proclamation by the President or the Governor of any State, territory, or possession; and

"(B) for longer than 30 days unless so ordered by the President or the Governor of any State."

(d) **USE OF FLAG DESIGN.**—Subsection (i) of section 176 of title 36, United States Code, is amended to read as follows:

"(i)(1) The flag should never be used for advertising purposes in any manner whatsoever. Advertising signs should not be fastened to a staff or halyard from which the flag is flown.

"(2) The flag should not be embroidered, printed, or used in a design, on such articles as cushions, handkerchiefs, and the like, and the flag should not be embroidered, printed, or used in a design in a manner intended to cast contempt upon or demean it.

"(3) The flag should not be printed or otherwise impressed on paper napkins or boxes or anything that is designed for temporary use and discard."

(e) **FLAGS ON CLOTHING.**—Subsection (j) of section 176 of title 36, United States Code, is amended by—

(1) inserting "(1)" after "(j)";

(2) inserting "postal workers," after "policemen,"; and

(3) adding at the end thereof the following:

"(2) Anyone wearing clothing upon which the flag is embroidered, printed, or used in a design should take measures to—

"(A) ensure that the clothing does not touch the ground; and

"(B) ensure that the flag is not embroidered, printed, or used in a design in a manner intended to cast contempt upon or demean it."

By Mr. MITCHELL (for himself, Mr. LAUTENBERG, Mr. CHAFEE, Mr. MOYNIHAN, Mr. COHEN, Mr. LIEBERMAN, Mr. D'AMATO, Mr. SARBANES, Mr. BRADLEY, Mr. FOWLER, Mr. DODD, Mr. GRAHAM, and Mr. PELL):

S. 1178. A bill to improve and expand programs for the protection of marine and coastal waters; to the Committee on Environment and Public Works.

#### MARINE PROTECTION ACT

Mr. MITCHELL. Mr. President, today I am introducing legislation to strengthen existing statutes designed to protect the quality of our marine and coastal waters.

The marine and coastal waters of this country are a natural resource of tremendous value and importance. Coastal and estuarine waters are ecological gold mines providing habitat for commercial and endangered species, food chain support, ground water recharge, and flood-peak reduction.

Marine resources are also an important part of the economy. The combined value of commercial and recreational fisheries is about \$12 billion. In addition, tourism is a major source of income in many coastal communities and recreational activities are often dependent on the quality of the marine environment.

Today, our coastal and ocean waters face an unprecedented range of environmental threats and the health of these waters is in sharp decline.

Last summer, beaches were closed throughout the Northeast after discovery of medical waste and other pollution problems. Lobsters taken off the mid-Atlantic coast have large burn holes as a result of pollution. Shellfish in Chesapeake Bay and coastal North Carolina have been decimated by pollution and disease. There is a large dead zone in the Gulf of Mexico. We face huge clean up problems in many east coast harbors, such as Boston Harbor. And, on the west coast, toxic chemicals, including PCB's, mercury, and other heavy metals, are in the sediments of Puget Sound, San Francisco Bay, and Santa Monica Bay.

Concern for a growing trend of marine pollution is confirmed by recent scientific studies. In April 1987, the Congressional Office of Technology Assessment [OTA] issued a report which concluded that the overall health of many of our estuaries and coastal waters "is declining or threatened."

The OTA report indicated that even full implementation and enforcement of existing regulations would not be sufficient to maintain or improve the health of these waters. The report states:

... even if total compliance with today's regulations is achieved, existing programs will not be sufficient to maintain or improve the health of all estuaries and coastal waters. In the absence of additional measures to protect our marine waters, the next few decades will witness new or continued degradation in many estuaries and coastal waters around the country.

In addition, the National Oceanic and Atmospheric Administration [NOAA] has published the results of the first year of a national program to monitor toxic chemicals at 50 coastal sites. The report provides an early indication of the magnitude of coastal contamination problems and found that "a number of sites revealed relatively high levels of toxic contaminants \* \* \*."

During the last Congress, as chairman of the Subcommittee on Environmental Protection, I chaired a series of five hearings on coastal pollution problems.

I chaired the first of these hearings in my home State of Maine to learn about the environmental conditions in the Gulf of Maine. The general conclusion of the hearing was that the Gulf of Maine is still very clean and does not now face the serious pollution problems present in other parts of the country. There also was agreement, however, that prevention of problems will require building a first-rate marine research and protection program.

Witnesses at that hearing included research scientists and representatives

of the fishing industry and the environmental community. Former Governor Ken Curtis summed up many concerns when he said:

What is needed most of all is a planned, well-coordinated approach to the research effort \* \* \* which is \* \* \* committed to studying and preserving the Gulf of Maine in a whole ecosystem approach.

Following our hearing in Maine, the subcommittee held further hearings on implementation of the Ocean Dumping Act, on the overall environmental condition of marine waters throughout the country, on the status of programs for the protection of Chesapeake Bay, and on legislation to improve marine research. Through these hearings, we were able to document the seriousness and extent of the pollution problems being reported throughout the country.

The major legislative accomplishment of the past Congress related to the marine environment was the enactment of Senator LAUTENBERG's legislation to amend the Ocean Dumping Act to ban the dumping of large volumes of sewage sludge off the New Jersey coast. This sewage sludge has been associated with damage to the environment and fisheries over a wide area of the North Atlantic. We were also able to enact tougher controls over the dumping of medical wastes in coastal waters.

It is essential that we build on the accomplishments of the last Congress and develop legislation which provides a comprehensive response to the growing evidence of declines in marine environmental quality. We cannot afford to let the quality of our coastal and marine waters continue to slip away as a result of neglect or carelessness. If future generations of Americans are to enjoy the wonders and the bounty of the sea, we must develop and implement the best possible program to protect the marine environment.

The legislation I am introducing today amend the Clean Water Act and the Marine Protection, Research and Sanctuaries Act to expand and improve programs for the protection of marine and coastal waters.

The authorities and programs provided by our existing statutes have made a substantial contribution to controlling pollution in coastal waters. But the growing evidence of serious marine pollution problems from every coastal region of the country and the extensive beach closings last summer have convinced me that it is time to consider substantial expansion of these existing programs and authorities.

Title I of today's bill includes a number of amendments to the marine and coastal provisions of the Clean Water Act.

The National Estuary Program—section 320 of the Clean Water Act—pro-

vides authority for the Environmental Protection Agency to work with States to organize management conferences to assess coastal water quality problems and develop response plans.

My legislation would expand the current program by requiring the EPA to prepare a comprehensive list of coastal waters experiencing a general degradation of environmental conditions and designate those waters.

The Administrator is to monitor the conditions of designated waters and work with States to develop management conferences for these waters as under current law. In addition, the Administrator would exercise special authorities for the protection of designated waters including more stringent requirements for discharge permits, wetlands assessments, pretreatment, stormwater discharges, and nonpoint pollution control.

For these designated waters with serious water quality problems, we should make every effort to hold the line on pollution and, at a minimum, keep these waters from getting any worse. To accomplish this, new authority is provided for a "coastal discharge standard," to apply to point source discharges in designated waters, which would require a showing of the need to discharge and no net increase in pollutant loading.

The National Estuaries Program authorization is increased from \$12 to \$25 million. In addition, new authority is provided for use of penalties paid by dischargers to designated waters for support of the program.

Recently, there has been growing concern for the environmental quality of Casco Bay in my home State of Maine. Threats to the quality of Casco Bay were documented in a recent report, and the State announced a special "Agenda of Action" in Casco Bay. The legislation I am introducing today includes a provision which would add Casco Bay to the list of estuaries considered as part of the National Estuaries Program of the Clean Water Act.

Another key provision of the bill would amend the Clean Water Act to establish a process for eliminating the overflows to marine waters of combined sanitary and storm sewers. The bill would require State agencies to inventory combined storm sewer and sanitary sewer discharges to coastal waters and to assess the potential for eliminating the discharges.

EPA is to work with States and municipalities to develop specific programs for eliminating overflows with emphasis on water conservation and storm water management, rather than the more expensive alternatives of discharge treatment or total system separation.

An existing marine combined sewer overflow authorization of \$200 million per year is redirected toward development of discharge elimination pro-

grams. Implementation of the programs is made eligible for funding under the State revolving loan funds under title VI of the Clean Water Act.

A major cause of delays in reducing the levels of pollutants discharged to marine waters is the lack of numerical water quality standards for toxic and other pollutants. The bill would shift authority to promulgate marine water quality standards from States to the EPA in an effort to assure the most expeditious application of appropriate standards. States, of course, would have the option of adopting more stringent standards than the EPA and could request modification of EPA standards based on specified criteria.

In a related effort, EPA is also directed to develop numerical standards for contaminants in marine sediments. These standards would apply to sediment regulated under section 404 of the Clean Water Act or dumped at sea under the authority of the Ocean Dumping Act.

Title II of this legislation provides a series of amendments to improve the management of sediment in the marine environment.

EPA is given new authority to establish criteria and information for pollutants in marine sediment, similar to criteria and information already required to be developed for water quality.

The Marine Protection, Research and Sanctuaries Act is amended to require that the Corps of Engineers determine if material to be dredged under the act contains pollutants in excess of levels established in sediment standards under the Clean Water Act. Such contaminated material may be dumped in the ocean, but a permit for such dumping must be issued by the EPA and new authority is provided for EPA to require special management of such materials.

Another provision of the bill clarifies the Marine Protection, Research and Sanctuaries Act to assure that States may issue more stringent requirements for ocean dumping and that EPA and the Corps of Engineers will comply with such requirements.

The bill also provides new requirements for designation of dumping sites under the Marine Protection, Research and Sanctuaries Act. EPA is to develop a site management plan for each site providing for baseline monitoring, special conditions for site management, and long-term management and termination of the site. Each site must be approved for dumping of materials determined to be contaminated.

Finally, section 404 of the Clean Water Act is amended to require an assessment of material to be dredged or filled to determine if it contains pollutants in excess of sediment standards. If contaminant standards are exceeded, additional factors are to be considered in granting a permit includ-

ing disposal at an ocean site designated for dumping of contaminated materials and measures to mitigate migration of contaminants.

Title III of the bill provides for studies of airborne deposition of contaminants in marine waters, a report identifying unregulated contaminants in coastal waters, and a report on the potential of microorganisms to degrade pollutants prior to discharge to marine waters.

This legislation is intended to complement legislation I introduced in March to expand and strengthen research and monitoring of marine and coastal waters. The Marine Research Act of 1989—S. 587—provides general authority to establish 10 regional marine research programs and encourage development of regional marine research plans. This research will help identify and prevent threats to the marine environment before they grow to be unmanageable and costly problems.

In conclusion, there is growing evidence of threats to the quality of the marine environment. While we have made some progress in developing legislation to respond to the coastal pollution problem, we must continue this effort by both expanding marine research and improving existing programs for protection of the marine environment.

This effort is essential if we are to keep pace with the growing threats to the marine environment and assure that this resource is protected for future generations.

Finally, Mr. President, I want to express my appreciation to Senators LAUTENBERG and CHAFEE for their support in the development of this legislation. I look forward to working with them on this important problem in the coming months.

I ask unanimous consent that the bill and copies of a section-by-section analysis of the bill be included at an appropriate place in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1178

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. (a) TITLE.—This Act may be cited as the "Marine Protection Act of 1989".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.  
Sec. 2. Findings.

#### TITLE I—WATER QUALITY PROTECTION PROGRAMS

Sec. 101. National Estuary Program.  
Sec. 102. Point source discharges to coastal waters.  
Sec. 103. Nonpoint source pollution control.  
Sec. 104. Marine sanitation devices.  
Sec. 105. Marine combined sewer overflow.  
Sec. 106. Marine water quality standards.

Sec. 107. Ocean discharge criteria.  
Sec. 108. Definitions.

#### TITLE II—MARINE SEDIMENT CONTAMINATION

Sec. 201. Marine sediment criteria and information.  
Sec. 202. Marine sediment contamination.  
Sec. 203. State ocean dumping requirements.  
Sec. 204. Site designation.  
Sec. 205. Dredge and fill program.

#### TITLE III—OTHER PROVISIONS

Sec. 301. Study of air deposition.  
Sec. 302. Identification of unregulated contaminants.  
Sec. 303. Research of microorganisms.

#### FINDINGS

SEC. 2. The Congress finds that—

(A) the Nation's marine and coastal waters are a resource of tremendous value;  
(B) marine and coastal waters, including estuaries, are vital and productive natural ecosystems;

(C) marine and near coastal waters support commercial and recreational fisheries with an annual value estimated at over \$12 billion per year;

(D) marine and coastal waters support extensive recreational activities and related support services;

(E) maintenance and protection of the environmental quality of the Nation's marine and coastal waters is essential to the commercial and recreational activities they support;

(F) recent studies and reports provide evidence of growing threats to the environmental quality and ecological integrity of marine and coastal waters;

(G) a report by the Congressional Office of Technology Assessment found that the overall health of estuaries and coastal waters is declining or threatened;

(H) studies by the National Oceanic and Atmospheric Administration and the Environmental Protection Agency have identified unexpectedly high levels of contaminants in a number of coastal areas;

(I) expanded and improved research and monitoring of marine and estuarine ecosystems is needed to gain a more complete understanding of these ecosystems and how man's activities may be affecting them;

(J) there is a need to expand and improve pollution control requirements programs for the control of point and nonpoint sources of pollution to marine and coastal waters;

(K) there is a need to develop plans and programs for the elimination of discharges of combined stormwater and sanitary sewer overflows to coastal waters;

(L) there is a need to expand and expedite the process of setting enforceable water quality standards for coastal waters and to develop standards for coastal sediments; and

(M) there is a need to improve the management of contaminated sediments and dredge materials.

#### TITLE I—WATER QUALITY PROTECTION PROGRAMS

##### NATIONAL ESTUARY PROGRAM

SEC. 101. Section 320 of the Federal Water Pollution Control Act is amended as follows:  
"SEC. 320. NATIONAL ESTUARY PROGRAM.

"(a) DESIGNATION OF PRIORITY ESTUARIES AND COASTAL WATERS.—

"(1) The Administrator shall, within eighteen months of the date of enactment of this Act and biennially thereafter, identify and designate, pursuant to this section, all estuaries and coastal waters experiencing a general degradation of environmental con-

ditions and which do not support a balanced, indigenous population of shellfish, fish, and wildlife and allow for recreational activities in and on the water.

"(2) In selection of estuaries or coastal waters pursuant to paragraph (1), the Administrator shall consider—

"(A) the extent and seriousness of water quality contamination;

"(B) the presence of toxic or other contaminants in sediment and the potential for migration of such contamination to water or aquatic organisms;

"(C) the condition of aquatic life and related habitat;

"(D) the presence of threatened or endangered species; and

"(E) anticipated total increases in pollution loadings.

"(3) In support of designation of estuaries and coastal waters pursuant to paragraph (1), the Administrator shall conduct such studies, research, and assessments as are necessary and shall, at a minimum, consider—

"(A) research, assessments, or related studies of the National Oceanic and Atmospheric Administration, including the Status and Trends Program, the National Sediment Contamination Assessment, and other studies;

"(B) estuaries and coastal waterbodies listed in paragraph (4) of this subsection; and

"(C) the views and comments of interested groups and the public.

"(4) In selection of estuaries and coastal waterbodies for designation under paragraph (1) of this section, the Administrator shall consider designation of Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Casco Bay, Maine; Massachusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor); Puget Sound, Washington; New York-New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albemarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; Galveston Bay, Texas; Santa Monica Bay, California; Barataria-Terrebonne Bay estuary complex, Louisiana; Indian River Lagoon, Florida; and Peconic Bay, New York.

"(5) The Governor of any State may nominate to the Administrator an estuary or coastal waterbody lying in whole or in part within that State for designation pursuant to paragraph (1) of this subsection. Following receipt of such a petition the Administrator shall evaluate the identified estuary pursuant to paragraphs (2) and (3) of this subsection and shall, within one hundred and eighty days of receipt of such petition, issue a notice in the Federal Register announcing the designation of such waterbody or the decision not to designate the waterbody, including an explanation of such action.

"(6) The Chesapeake Bay shall be treated as a coastal waterbody designated pursuant to this subsection for the purposes of subsection (b) of this section.

"(7) For the purposes of this subsection, the term "estuaries or coastal waters" refers to estuaries, bays, sounds or other distinct marine waterbodies which are associated with more than one political subdivision and which receive pollution loadings from a range of point and nonpoint sources.

"(b) SPECIAL AUTHORITIES OF THE ADMINISTRATOR.—

"(1) In the case of any estuary or coastal waterbody designated after January 1, 1989,

the Administrator; or with respect to subparagraphs (A) and (B) in the case of a State authorized to issue permits under section 402 of this Act, the State, shall—

"(A) exercise authorities concerning discharges to coastal waters pursuant to section 301(q) of this Act;

"(B) notwithstanding the schedules established pursuant to section 402(p)(4) or any other provision of law, within one hundred and eighty days of designation, issue permits for any industrial and municipal discharges of stormwater to such waters, consistent with the requirements of section 402(p)(3) of this Act;

"(C) within one hundred and eighty days of designation, consider pursuant to section 404(c) of this Act, prohibiting the specification of an area designated pursuant to this section as a disposal site and denying or restricting the use of any area designated pursuant to this section as a disposal site;

"(D) exercise authorities concerning prohibition of discharges of sewage from vessels pursuant to section 312 of this Act;

"(E) require that each publicly owned treatment work discharging to such waters, regardless of the volume of such discharge of population served by the treatment works, shall develop and enforce facility specific programs for the pretreatment of industrial wastes; and

"(F) in the case of a State that does not have an approved assessment and/or management program for the affected waterbody that complies with section 319(b) of this Act, conduct an assessment and prepare a management program for the watershed of such waters within eighteen months of the date of designation.

"(c) RESEARCH AND ASSESSMENT.—(1) Upon the designation of an estuary or coastal waterbody pursuant to subsection (a), the Administrator, in cooperation with the Under Secretary and with affected States shall develop and implement—

"(A) a long-term program of monitoring to determine variations in pollutant concentrations, marine ecology, and other physical or biological environmental parameters which may affect the designated waterbody to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures;

"(B) a program of ecosystem assessment assisting in the development of (i) baseline studies which determine the biological conditions in the designated waterbody and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within the waterbody into a set of probable effects on biological conditions in such water bodies;

"(C) a comprehensive water quality and sediment sampling program for the periodic monitoring of the chemical conditions in the designated waterbody (including nutrients, chlorine, acid precipitation, dissolved oxygen, organic chemicals, metals and other toxic pollutants); after consultation with interested State, local, interstate, or international agencies;

"(D) review and analysis of all environmental sampling data presently collected from such waters; and

"(E) a program of research to identify the movements of nutrients, sediments and pollutants through designated waterbodies and the impact of nutrients, sediments, and pollutants on water quality, the ecosystem, and designated or potential uses of such waters.

(2) The Administrator may make grants to State, interstate, and regional water pollution control agencies and entities to support research monitoring, and related activities pursuant to this subsection. The amount of grants to any person under this subsection for a fiscal year shall not exceed 75 per centum of the costs of such activity and shall be made on the condition that the non-Federal share of such costs are provided from non-Federal sources.

(3) The Administrator shall provide a report of the status of research and the findings of such research to the Governor of each State in which a waterbody designated pursuant to this section is located.

**"(d) MANAGEMENT CONFERENCES.—**

"(1) Upon the designation of an estuary or coastal waterbody pursuant to subsection (a), or as soon thereafter as practicable, the Administrator shall convene a management conference. In any case in which the Administrator has initiated a management conference prior to January 1, 1989, the Administrator may maintain and support such management conference consistent with the requirements of this subsection.

"(2) The purposes of any management conference convened pursuant to this subsection shall be to—

"(A) assess trends in water quality, natural resources, and uses of the designated waterbody;

"(B) collect, characterize, and assess data on toxics, nutrients, and natural resources within the designated waterbody to identify the causes of environmental problems;

"(C) develop the relationship between the in-place loads and point and nonpoint loadings of pollutants to the waterbody and the potential uses of the waterbody, water quality, and natural resources;

"(D) develop a comprehensive environmental protection plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the designated waterbody, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in and on the waterbody and assure that the designated uses of the waterbody are protected;

"(E) develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;

"(F) monitor the effectiveness of actions taken pursuant to the plan; and

"(G) review all Federal financial assistance program and Federal development project in accordance with the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of the plan prepared under this section.

For purposes of paragraph G, such programs and projects shall not be limited to the assistance programs and development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the plan developed under this section.

"(3) The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of—

"(A) each State and foreign nation located in whole or in part in the waterbody for which the conference is convened;

"(B) international, interstate, or regional agencies or entities having jurisdiction over all or a significant part of the waterbody;

"(C) each interested Federal agency, as determined appropriate by the Administrator;

"(D) local governments having jurisdiction over any land or water within the waterbody, as determined appropriate by the Administrator; and

"(E) affected industries, public and private educational institutions, and the general public, as determined appropriate by the Administrator.

"(4) In developing an environmental protection plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the waterbody that have been developed by or made available to Federal, interstate, State, and local agencies.

"(5) The Administrator at the request of a management conference convened pursuant to this subsection is authorized to require any person whose alleged activities cause or contribute to pollution to file with it in such form as the Administrator shall require, a report based on existing data, furnishing such information as may reasonably be required as to the character, kind, and quantity of such activities and the use of facilities, management practices, or other means to prevent or reduce pollution resulting from such activities by the person filing such a report. Such report shall be made under oath and shall be filed with the Administrator within such reasonable period as the Administrator requires. Upon a showing satisfactory to the conference by the person filing such report that such report or portion thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge trade secrets or secret processes of such person, the Administrator shall consider such report or portion thereof confidential for the purposes of section 1905 of title 18 of the United States Code. If any person required to file any report under this paragraph shall fail to do so within the time fixed by the Administrator for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of \$1,000 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States in the district court of the United States where such person has his principal office or in any district in which he does business. The Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection.

"(6) A management conference convened under this section shall be convened for a period not to exceed five years. Such conference may be extended by the Administrator, and if terminated after the initial period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

"(7) Not later than one hundred and twenty days after the completion of an environmental protection plan and after providing for public review and comment, the Administrator shall approve such plan, or portions thereof, if the plan meets the requirements of this section and the affected Governor or Governors concur.

"(8) Upon approval of an environmental protection plan under this section, such plan shall be implemented. Funds authorized to be appropriated under sections 207, 319, and 607 of this Act may be used in accordance with the applicable requirements of this Act to assist States with the implementation of such plan.

"(9) The Administrator is authorized to make grants to State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals. Grants under this subsection shall be made to pay for assisting the development of a conservation and management plan under this subsection. The amount of grants to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year shall not exceed 75 per centum of the total annual costs of such research and activities and shall be made on condition that the non-Federal share of such costs are provided from non-Federal sources. Any person (including a State, interstate, or regional agency or entity) that receives a grant under this paragraph shall report to the Administrator not later than eighteen months after receipt of such grant and biennially thereafter on the progress being made under this section.

"(10) The Administrator shall monitor the implementation of environmental protection plans developed pursuant to subparagraph (D) of paragraph (2) of this subsection following the termination of the management conference.

**"(e) REPORT TO CONGRESS.—**

"(1) The Administrator, in cooperation with the Under Secretary, shall submit to the Congress, within eighteen months of the date of enactment of this Act and biennially thereafter, a comprehensive report on the activities authorized by this section including—

"(A) a listing of priority monitoring and research needs in coastal waters;

"(B) an assessment of the state of health of the Nation's coastal waters;

"(C) a list of the estuaries and coastal waterbodies designated pursuant to subsection (a) of this section;

"(D) an evaluation of the pollution abatement measures implemented pursuant to this section;

"(E) an assessment and description of the management conferences in progress and a report on the implementation of adopted environmental protection plans;

"(F) an assessment of major obstacles to the restoration of environmental quality in designated coastal waterbodies and in coastal waters generally; and

"(G) recommendations for actions to assure the prompt and successful implementation of programs and measures to assure the quality of coastal waters.

"(2) The Administrator shall provide for public review and comment on the report provided for in this subsection.

**"(f) AUTHORIZATION OF APPROPRIATIONS.—** There are authorized to be appropriated to the Administrator not to exceed \$25,000,000 per fiscal year for each of fiscal years 1990, 1991, 1992, and 1993 for—

"(A) expenses related to the administration of this section, not to exceed 10 per centum of the amount appropriated under this subsection;

"(B) expenses related to the implementation of research and assessment activities pursuant to subsection (c) of this section, in-

cluding grants pursuant to paragraph (2) of subsection (c); and

"(C) making grants under paragraph (9) of subsection (d) of this section.

"(g) USE OF PENALTIES.—(1) Subsequent to the designation of a waterbody pursuant to this section, any penalties paid as a result of enforcement actions under section 309 or 404(s) of this Act by the Federal Government or a State for illegal activities in the designated waterbody shall be deposited into a special fund of the Treasury entitled the 'Estuaries Protection Fund'.

"(2) The amounts in such fund shall be available for appropriation to supplement funds authorized or appropriated pursuant to subsection (f) of this section and shall be used in accordance with the requirements of subsection (f) of this subsection.

"(3) To the extent practicable, the Administrator shall assure that the amounts contributed to the Estuaries Protection Fund from discharges within a given waterbody are used to support activities within that waterbody."

#### POINT SOURCE DISCHARGES TO COASTAL WATERS

SEC. 102. COASTAL DISCHARGE STANDARD.—At the end of section 301 of the Federal Water Pollution Control Act add the following new subsection—

"(q) COASTAL DISCHARGE STANDARD.—

"(1) In the case of any waterbody designated pursuant to section 320 of this Act on or after January 1, 1989, the Administrator shall issue or renew a permit pursuant to section 402 of this Act only if the applicant demonstrates—

"(A) a need to discharge to the designated waterbody based on a showing of the full utilization of available waste minimization practices and technologies and the lack of alternative production processes or disposal options; and

"(B) that a proposed new discharge, or any increase in volume or toxicity of an existing discharge, will be offset by a decrease in other discharges or loadings to the waterbody resulting in no net increase in pollutant loading to the waterbody.

"(2) This subsection shall apply to all proposed, new discharges to a waterbody designated pursuant to section 320 of this Act one hundred and eighty days after the date of enactment of this section or at the date of designation of the waterbody pursuant to section 320 of this Act, whichever is later.

"(3) Notwithstanding the terms of any permit issued pursuant to section 402, this subsection shall apply to any existing discharge, except for discharges composed entirely of storm water, to a waterbody designated pursuant to section 320 of this Act which has a permit pursuant to section 402 three years after date of designation of a waterbody.

"(4) The Administrator may modify the requirements of paragraph (1) of this subsection, with respect only to an existing discharger, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements will—

"(A) represent the maximum use of technology within the economic capability of the owner or operator; and

"(B) result in reasonable further progress toward the elimination of the discharge of pollutants.

"(5) Nothing in this subsection relieves or reduces the obligation of a permittee to comply with the enforceable requirements of this Act."

#### NONPOINT SOURCE POLLUTION CONTROL

SEC. 103. (a) COASTAL PROJECT CERTIFICATION.—Amend section 401 of the Federal Water Pollution Control Act by—

(1) adding to the first sentence of paragraph (a)(1) following the first occurrence of the phrase "navigable waters," the following "or any applicant for Federal flood insurance for any activity which may result in any discharge to the navigable waters or any pollution of such waters;"

(2) replacing the phrase "licensing or permitting agency" with the phrase "licensing, permitting, or insuring agency" in each place that it occurs;

(3) replacing the term "discharge" with the phrase "discharge or pollution" in each place that it occurs, except for the first use of such term in the first sentence of paragraph (a)(1);

(4) replacing the phrase "license or permit" with the phrase "Federal license, permit, or flood insurance" in each place that it occurs, except in paragraph (a)(3);

(5) replacing the phrase "licensed or permitted" with the phrase "licensed, permitted, or insured" in each place that it occurs;

(6) adding to subsection (d), after the phrase "section 307 of this Act," the phrase "best management practices and measures under section 319 of this Act,"; and

(7) adding to the end thereof the following new subsection:

"(e) For the purposes of this section the term "Federal flood insurance" refers to insurance provided pursuant to the National Flood Insurance Act for any new structure located in a flood plain associated with any coastal waters as defined in section 502 of this Act."

(b) NATIONAL COASTAL REGISTRY.—Amend title V of the Federal Water Pollution Control Act by adding at the end thereof the following new section:

#### "NATIONAL COASTAL REGISTRY

"SEC. 520. (a) LISTING.—The Administrator shall establish a national registry of coastal land. The Administrator shall list land in the national registry based on submission of a completed application, in such form as the Administrator may prescribe, by the property owner providing basic information concerning the property including but not limited to—

"(1) the location and size of the property;

"(2) the physical characteristics of the property;

"(3) known wildlife habitat or other significant natural features or characteristics; and

"(4) proof of ownership of the land.

Inclusion of land in the National Coastal Registry shall be at the sole discretion of the land owner.

"(b) INFORMATION AND EDUCATION.—The Administrator shall operate a program to provide registrants of coastal land with informational and educational materials concerning—

"(1) land management and related practices to prevent water pollution and protect habitat;

"(2) activities and practices to protect and foster the development of aquatic life and wildlife;

"(3) measures to preserve and protect significant natural features of land or significant natural resources;

"(4) the activities of Federal, State, and local agencies to protect coastal waters including activities pursuant to sections 201, 309, 319, 320, 402, and 404 of this Act; and

"(5) the various requirements of Federal and State laws concerning land manage-

ment, discharges to water, and other related activities.

Information provided pursuant to this paragraph may be adjusted to apply specifically to land within a given region of the country or a given State.

"(c) STATE PARTICIPATION.—At the request of a Governor of a State, the Administrator may delegate operation of the informational and educational program established by subsection (b) within such State to a State agency. Costs associated with activities pursuant to this section are eligible for funding under section 106 of this Act.

"(d) REGISTRY DOCUMENT.—The Administrator shall publish on a periodic basis a National Coastal Registry document identifying and summarizing land listed pursuant to this subsection and shall provide a copy to any person submitting a completed application pursuant to paragraph (1) of this subsection at no cost.

"(e) DEFINITION.—For the purposes of this subsection, the term "coastal land" means any property, including wetlands, which is located within two thousand five hundred feet of any coastal waters."

(c) FAILURE TO SUBMIT MANAGEMENT PROGRAM FOR COASTAL WATERS.—Section 319(e) of the Federal Water Pollution Control Act as amended is amended by adding at the end thereof the following: "Beginning on August 4, 1989, in the case where a State has failed to submit a management program under subsection (b) or the Administrator does not approve such a management program for a watershed of coastal waters, a local public agency or organization may act pursuant to this subsection regardless of the views of the applicable State."

(d) PRIORITY FOR GRANT ASSISTANCE.—Section 319(h)(5) of the Federal Water Pollution Control Act (33 U.S.C. 466 et seq.) is amended by striking "and" at the end of paragraph (C), inserting "and" at the end of paragraph (D), and adding the following—

"(E) control nonpoint source pollution of waters designated pursuant to section 320 of this Act."

#### MARINE SANITATION DEVICES

SEC. 104. (a) PROHIBITION OF DISCHARGE TO DESIGNATED WATERS.—Section 312(f)(4) of the Federal Water Pollution Control Act (33 U.S.C. 466 et seq.) is amended by adding at the end thereof the following new paragraph:

"(C) In the case of any waterbodies designated pursuant to section 320 of this Act, the Administrator shall, within one hundred and eighty days of such designation, by regulation completely prohibit the discharge from a vessel of sewage (whether treated or not) into such waters."

(b) PENALTIES FOR PROHIBITED DISCHARGES.—Section 312(j) of the Federal Water Pollution Control Act is amended by adding to the first sentence following "subsection (h) of this section" the following: "or any prohibition established pursuant to paragraph (f) (3) or (4) of this section".

(c) STUDY OF PROGRAM IMPLEMENTATION.—Section 312 of the Federal Water Pollution Control Act, as amended, is amended by adding at the end thereof the following new subsection—

"(o) The Administrator, after consultation with the Secretary of the Department in which the Coast Guard is operating, shall conduct a study to determine the availability of adequate facilities for the safe and sanitary removal and treatment of sewage from vessels operating on coastal waters. Within twelve months of the date of enact-

ment of this Act, the Administrator shall report to the Congress the results of such study and shall make recommendations concerning specific actions, including amendments to the Federal Water Pollution Control Act as amended, as are necessary to assure that adequate facilities for the safe and sanitary removal and treatment of sewage from vessels operating on coastal waters are reasonably available."

#### MARINE COMBINED SEWER OVERFLOWS

SEC. 105. (a) MARINE COMBINED SEWER OVERFLOWS.—Amend title IV of the Federal Water Pollution Control Act by adding at the end thereof the following new section:

"SEC. 406. MARINE COMBINED SEWER OVERFLOW.

"(a) MARINE COMBINED SEWER OVERFLOW INVENTORY.—

"(1) Each State in which a municipality discharges overflows from combined storm-water sewers and sanitary sewers into coastal waters shall, within one year of the date of enactment of this section and biennially thereafter prepare and submit to the Administrator an inventory of all such discharges in the State which shall include—

"(A) identification of the location of each such discharge, and the waterbody affected;

"(B) identification of the municipal entity responsible for the discharge;

"(C) identification of the estimated volume of discharge over a one-year period and the estimated pollutant loading of the discharge over such period, including any pollutant introduced by an industrial discharger;

"(D) assessment of the proportion of the volume of the combined discharge to the volume capacity of the appropriate treatment works over the maximum measured or estimated storm event that would occur during a seven-day, ten-year storm event, or a one-day, two-year storm event, whichever is greater;

"(E) preliminary assessment of the potential to eliminate the discharge through flow reduction methods, including water conservation; and

"(F) the nature and status of any existing programs to eliminate such discharges.

"(b) MARINE COMBINED SEWER OVERFLOW ELIMINATION PROGRAMS.—

"(1) Any municipality listed pursuant to paragraph (B) of subsection (a)(1) shall develop and submit to the Administrator a program for the elimination of all discharges listed pursuant to paragraph (A) of subsection (a)(1).

"(2) The program required pursuant to this section shall be submitted to the Administrator not later than twenty-four months after the date of enactment of this section and shall—

"(A) identify best management practices, regulatory and nonregulatory programs, and other measures to be taken by the municipality to eliminate the discharge of overflows from combined storm-water sewers and sanitary sewers;

"(B) establish a schedule for development of plans and implementation of best management practices programs, and other measures providing for implementation of such practices, programs, and measures at the earliest practicable date but in no case more than three years from the date of submission of the program; and

"(C) estimate the costs of design and implementation of best management practices, programs, and other measures including the estimated financial contributions from local, State, and Federal sources.

"(3) The municipality shall provide for public review and comment on the program

developed pursuant to this subsection and shall coordinate development of the program with the State agency developing the management program required pursuant to section 319(b) of this Act, with any management conference convened pursuant to section 320 of this Act, and with other interested local, regional, county, or other governments.

"(4) Not later than three months after the submission of a program pursuant to this section, the Administrator shall approve or disapprove the program. The Administrator shall approve the program only if—

"(A) the program meets the requirements of subsection (b)(2) of this section;

"(B) adequate authority exists or adequate financial resources are available to implement the program;

"(C) the schedule for implementation of the program as expeditious as practicable, but in no case later than five years from the date of program approval; and

"(D) the practices, programs, and measures proposed in the program are adequate to assure the elimination of discharges of overflows from combined storm-water sewers and sanitary sewers or the municipality has applied for a permit pursuant to section 402 of this Act for any discharge of overflows not to be eliminated.

"(5) If the Administrator disapproves the program pursuant to this subsection, the Administrator shall notify the municipality of any revisions or modifications necessary to obtain approval. The municipality shall have three months to submit its revised plan and the Administrator shall approve or disapprove the program in three months.

"(6) Any municipality required to develop a program pursuant to this section which does not have an approved program by the date thirty-six months after the date of enactment of this section or which fails to implement the program shall be subject to penalties pursuant to subsections (d) and (g) of section 309 of this Act.

"(7) Within thirty-six months from the date of enactment of this section, the Administrator shall modify or issue permits pursuant to section 402 of this Act for any discharge of combined storm-water sewers and sanitary sewers pursuant to subparagraph (D) of paragraph (4) of this subsection. Such permit shall provide a schedule which will assure implementation of treatment as defined by section 304(d)(1) of this Act and such additional treatment as will assure that the discharge will not contribute to the violation of a water quality or sediment quality standard pursuant to this Act as expeditiously as possible but not less than five years from the date of permit issuance.

"(8) Nothing in this section shall either relieve any municipality from liability for any existing violation of this Act, or eliminate any existing duty to obtain a permit pursuant to section 402 of this Act.

"(c) COMBINED SEWER OVERFLOW ELIMINATION GUIDANCE.—

"(1) Within one year from the date of enactment of this section, the Administrator shall publish guidance describing best management practices, regulatory, and nonregulatory programs, and other measures for the elimination of combined storm-water and sanitary sewer overflows including, but not limited to—

"(A) implementation of domestic water conservation programs to reduce sewage influent;

"(B) implementation of inflow and infiltration reduction measures to reduce volumes of sewage and storm-water influent;

"(C) implementation of requirements for volume reduction or elimination and detention during and following storm events by industrial users;

"(D) implementation of storm-water management controls, including decentralized storm-water detention basins, buffer strips, and related controls;

"(E) construction of detention facilities for storage of combined influent prior to treatment at the publicly owned treatment works or increases in capacity of publicly owned treatment works;

"(F) estimated, average design and construction schedules and costs for best management practices, programs, and other measures; and

"(G) model local ordinances or regulations, including model amendments to local pretreatment programs.

"(2) Any delay by the Administrator in issuing guidance under this provision shall not excuse the obligation of any municipality to comply with the requirements of this section.

"(3) The Administrator shall consult with public interest groups and other interested parties in development of guidance pursuant to paragraph (1).

"(d) DEFINITION.—For the purposes of this subsection, the term 'treatment works' shall be as defined in section 212(2) of this Act."

(b) ELIGIBILITY FOR STATE REVOLVING LOAN FUNDS.—

(1) Amend section 601(a) of the Federal Water Pollution Control Act by striking "and (3)" and inserting in lieu thereof:

"(3) for developing and implementing a conservation and management plan under section 320, and (4) implementing a combined storm-water and sanitary sewer elimination program under section 406(b)."

(2) Amend section 603(c) of the Federal Water Pollution Control Act by striking "and (3)" and inserting in lieu thereof:

"(3) for developing and implementing a conservation and management plan under section 320, and (4) implementing a combined storm-water sewer and sanitary sewer elimination program pursuant to section 406(b)."

(c) GRANT ASSISTANCE.—Amend section 201(n)(2) of the Federal Water Pollution Control Act by striking the last sentence and inserting in lieu the following: "Such assistance shall be provided only for development of combined storm-water and sanitary sewer elimination programs pursuant to section 406(b) of this Act. The Administrator shall allocate available funds to address the most significant water pollution problems and shall give priority to municipalities discharging to waters designated pursuant to section 320 of this Act. The amount of grants to any municipality under this subsection for a fiscal year shall not exceed 75 per centum of the costs of a project and shall be made on the condition that the non-Federal share of such costs are provided from non-Federal sources."

(e) REPORTING.—Amend section 516(b)(1) of the Federal Water Pollution Control Act by adding at the end thereof the following new sentence: "For the purposes of this subsection, the term 'treatment works' shall include any discharges from combined storm sewers and sanitary sewers and shall reflect the data provided by States pursuant to section 406(a) this Act."

#### COASTAL WATER QUALITY AND SEDIMENT QUALITY STANDARDS

SEC. 106. (a) Section 303 of the Federal Water Pollution Control Act is amended by

adding at the end thereof the following new subsection—

**"(i) COASTAL WATER QUALITY AND SEDIMENT QUALITY STANDARDS.—**

"(1) The Administrator shall promulgate numerical standards for coastal water quality, and coastal sediment quality. Such standards shall assure the protection and propagation of a balanced, indigenous population of fish, shellfish, and wildlife and provide for recreation in and on the water.

"(2) The Administrator shall, within twenty-four months of the date of enactment of this subsection and biennially thereafter, promulgate standards pursuant to this section for those pollutants for which criteria and information have been established pursuant to section 304(a) and 304(n) of this Act which are adequate to assure the uses identified in paragraph (1) of this section.

"(3) In the case of a pollutant for which criteria and information under section 304(a) and 304(n) have not been developed, any person may petition the Administrator to develop such criteria. Any petitioner shall provide evidence of the negative effect of the pollutant on the marine environment. The Administrator shall approve the petition if he determines that the pollutant is impairing or preventing the attainment of the uses identified in paragraph (1) in the coastal waters of three or more States. Within six months of the receipt of a petition, the Administrator shall publish a notice in the Federal Register approving or denying the petition. If the Administrator fails to announce a decision pursuant to this paragraph, such petition shall be deemed approved.

"(4) In the case of approval of a petition pursuant to paragraph (3) of this subsection, the Administrator shall, within twenty-four months of the date of such decision, publish criteria and information for such pollutant pursuant to sections 304(a) and 304(n).

"(5) Any standard adopted by a State pursuant to the authorities of this Act shall have precedence in application to all activities and authorities pursuant to this Act, unless the standard adopted pursuant to this subsection is more stringent or protective of human health and the environment than the standard adopted by the State, in which case the standard adopted pursuant to this subsection shall apply.

"(6) The Governor of any State may petition the Administrator to establish a lower numerical standard than the numerical standard adopted for a pollutant pursuant to this subsection for the coastal waters of that State. A Governor's petition shall provide evidence that the application of the lower numerical standard will assure a degree of protection to human health and the environment equal to that provided by the standard adopted pursuant to this section and that the lower numerical standard is appropriate because of significant differences in the biological, physical, and chemical characteristics of the waters in question and the coastal waters of the United States. Within six months of the date of the petition, and after holding a hearing in the area of the State identified in the petition, the Administrator shall publish in the Federal Register a notice approving or disapproving the petition and providing an explanation of such action.

"(7) The Administrator may comply with the requirements to establish sediment quality standards under this subsection by establishing a scientific method for convert-

ing numerical water quality standards to numerical sediment quality standards. Any such method shall be reviewed and approved by the Science Advisory Board of the Environmental Protection Agency."

**OCEAN DISCHARGE CRITERIA**

**SEC. 107. AMENDMENTS TO OCEAN DISCHARGE CRITERIA.—**

(a) **CLARIFICATION OF SCOPE.**—Strike section 403(a) of the Federal Water Pollution Control Act and insert in lieu thereof the following—

"(a) **OCEAN DISCHARGE CRITERIA.**—In addition to any other requirements of this Act, no permit shall be issued under section 402 of this Act for a discharge into the territorial sea, the waters of the contiguous zone, the oceans, or, beginning one hundred and eighty days after the date of enactment of this subsection, the coastal waters, if the Administrator finds, based on an assessment of the criteria provided in subsection (c), that the discharge will prevent the protection and propagation of a balanced, indigenous population of fish, shellfish, and wildlife and will not provide for recreation in and on the water or that the discharge will prevent the attainment of standards established pursuant to section 303(i) of this Act."

(b) **REVISION.**—Strike the first five lines of paragraph (c)(1) of section 403 and insert in lieu thereof the following:

"(c)(1) In assessing the effects of a proposed discharge on the coastal and marine environment, the Administrator shall consider—

(c) **LIMITATION OF REGULATIONS.**—Amend paragraph (c)(2) of section 403 by adding at the end thereof the following: "Any existing or proposed regulations creating exemptions to the limitations of this section are herewith deemed invalid."

**SEC. 108. DEFINITIONS.**—Section 502 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:

"(21) The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(22) The term 'Under Secretary' means the Under Secretary of Commerce for Oceans and Atmosphere, who serves as the Administrator of the National Oceanic and Atmospheric Administration.

"(23) The term 'Federal agency' means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government Corporation.

"(24) The terms 'estuary' and 'estuarine zone' have the meanings such terms have in section 104(n)(4) of the Federal Water Pollution Control Act, except that the terms shall also include associated aquatic ecosystems and those tributaries draining into the estuary up to the historic head of tidal influence.

"(25) The terms 'coastal waters' or 'coastal waterbody' refer to estuaries, waters of the estuarine zone, and any other waters seaward of the historic height of tidal influence to the outer boundary of the territorial sea.

"(26) The term 'coastal sediment' refers to sediments underlying coastal waters."

**TITLE II—MARINE SEDIMENT CONTAMINATION**

**MARINE SEDIMENT CRITERIA AND INFORMATION**

**SEC. 201. COASTAL SEDIMENT CRITERIA AND INFORMATION.**—Amend section 304 of the Federal Water Pollution Control Act by

adding at the end thereof the following new subsection—

**"(n) COASTAL SEDIMENT CRITERIA AND INFORMATION.—**

"(1) In the case of any pollutant for which criteria and information are published pursuant to subsection (a) of this section, the Administrator shall, within twenty-four months of the date of enactment of this Act, revise and republish such criteria and information as necessary to assure that such criteria and information address coastal sediment to an extent adequate for development of sediment standards pursuant to section 303(i) of this Act. Criteria and information concerning coastal sediment shall be comprehensive and comparable to criteria and information concerning water quality.

"(2) Beginning one hundred and eighty days from the date of enactment, the Administrator shall provide that any criteria and information published pursuant to subsection (a) of this section shall address the quality of coastal sediment to an extent adequate for development of sediment standards pursuant to section 303(i) of this Act, and that such criteria and information is comprehensive and in all ways comparable to criteria and information concerning water quality."

**MARINE SEDIMENT CONTAMINATION**

**SEC. 202. (a) CONTAMINATION OF DREDGE MATERIAL.—**

(1) Amend section 1413(a) of the Marine Protection, Research and Sanctuaries Act by striking "and (d)" in the first sentence and adding in lieu thereof the following: "(d) and (f)".

(2) Amend section 1413(c) of the Marine Protection, Research and Sanctuaries Act by adding to the second sentence following "critical areas," the following: "or an assessment of contamination pursuant to subsection (f) of this section."

(3) Amend section 1413 of the Marine Protection, Research and Sanctuaries Act by adding at the end thereof the following new subsection:

**"(f) CONTAMINATION OF DREDGE MATERIAL.—**

"(1) Prior to making a determination to issue a permit pursuant to subsection (a) of this section, or initiating a Federal project pursuant to subsection (e), the Secretary shall assess the material to be dredged and determine whether the material contains pollutants in concentrations in excess of the concentrations, established in sediment standards established pursuant to section 303(i)(1) of the Federal Water Pollution Control Act.

"(2) If the Secretary finds that material to be dredged contains pollutants in concentrations in excess of sediment standards established pursuant to section 303(i)(1) of the Federal Water Pollution Control Act, dumping of such material shall not require a permit pursuant to this section but shall, notwithstanding any other provision of law, require a permit pursuant to section 1412 of this Act."

(b) **SPECIAL MANAGEMENT OF CONTAMINATED DREDGE MATERIAL.**—Amend section 1412 of the Marine Protection, Research and Sanctuaries Act by adding a new subsection at the end thereof:

**"(f) SPECIAL MANAGEMENT OF CONTAMINATED DREDGE MATERIAL.—**

"(1) In a case where the Administrator approves a permit for the dumping of dredge material which has been found to be contaminated pursuant to subsection 1413(f) of this Act, the Administrator shall, in addi-

tion to such other limitations as appropriate pursuant to this section or section 1414, provide that the permit for such dumping will—

"(A) require that dumping occur at a time of year that will result in minimal adverse impact on aquatic resources and on potential migration of material from the designated site;

"(B) be for a period of not to exceed one year;

"(C) beginning eighteen months after the date of enactment of this Act, require the implementation or best management practices established by the Administrator pursuant to paragraph (2) of this subsection; and

"(D) beginning three years from the date of enactment of this Act, require that dumping occur at a dumpsite designated pursuant to section 1412(c) of this Act as suitable for the dumping of contaminated dredge material.

"(2) Within eighteen months of the date of enactment of this Act, the Administrator, after consultation with the Secretary, shall publish in the Federal Register a description of best management practices to be used in the dredging, transport, and disposal of dredge material found to be contaminated pursuant to section 1413(f) of this Act. Best management practices shall be designed to minimize, to the fullest extent practicable, the migration of pollutants to the water column, dispersion of pollutants, and impact of dredging, transport, or disposal on the marine environment.

(c) **GENERAL PERMITS.**—Section 1414(c) is amended by adding at the end thereof the following: "No general permit may be issued pursuant to this subsection for material determined to be contaminated pursuant to section 1413(f) of this title."

#### STATE OCEAN DUMPING REQUIREMENTS

**SEC. 203. STATE OCEAN DUMPING REQUIREMENTS.**—Strike section 1416(d) of the Marine Protection, Research and Sanctuaries Act and insert in lieu thereof the following new section:

"(d)(1) Any State may adopt criteria, rules, or regulations relating to dumping of materials into ocean waters within its jurisdiction, only if such criteria, rules or regulations are more stringent and protective of such waters than the criteria, rules, or regulations of this Act.

"(2) Any criteria, rules, or regulations adopted pursuant to paragraph (1) of this subsection shall be transmitted to the Administrator and to the Secretary within thirty days of the date of adoption by the State and, upon receipt, the Administrator and the Secretary shall assure compliance with such criteria, rules, and regulations."

#### SITE DESIGNATION

**SEC. 204. (a) SITE DESIGNATION AMENDMENTS.**—Strike section 1412(c) of the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1412 et seq.) and insert in lieu thereof the following:

"(c)(1) The Administrator may, consistent with the criteria established pursuant to subsection (a) of this section, designate sites or times for dumping, including dumping pursuant to subsection (e) of section 1413.

"(2) The Administrator shall, when he finds it necessary to protect critical areas, designate sites or times within which certain materials may not be dumped, including dumping pursuant to subsection (e) of section 1413.

"(3) The Administrator, in cooperation with the Undersecretary, shall develop and implement a site management plan for each

site designated pursuant to this section. Such plan shall include—

"(A) a baseline assessment of environmental conditions at the site;

"(B) special management conditions to be implemented at each site to minimize to the fullest extent practicable adverse impacts on aquatic life and to prevent the migration of contaminants from the site;

"(C) a program of monitoring for each site including:

"(i) water quality at the site and in the area of the site;

"(ii) sediment quality at the site and in the area of the site;

"(iii) the diversity, productivity, and stability of aquatic organisms at the site and in the area of the site; and

"(iv) such other conditions as the Administrator deems appropriate.

"(D) the anticipated use and management of the site over the following twenty-year period including the expected termination of dumping at the site, the anticipated need for site management, including pollution control, following the termination of the use of the site.

"(4) Not less than five years after the date of designation of a site pursuant to this section, and every five years thereafter, the Administrator shall review the designation of each site designated pursuant to this section and shall redesignate such site if such redesignation is consistent with the criteria established pursuant to paragraph (1) of this subsection and subsection (a) of this section.

"(5) In designation or redesignation of sites pursuant to this section, the Administrator shall determine whether the dumping of materials determined to be contaminated pursuant to section 1413(f) of this Act or section 404(u) of the Federal Water Pollution Control Act at the site would be consistent with the criteria established pursuant to subsection (a). If the Administrator determines that the dumping of contaminated materials is not consistent with such criteria, the Administrator shall prohibit the dumping of such materials at the site.

"(6) The Administrator shall provide for public review and comment of designation actions including the management plan pursuant to paragraph (3) of this subsection and shall hold a hearing on the proposed designation or redesignation in the region of the country in which the site is located."

(b) **PERMIT CONDITIONS.**—(1) Amend section 1414(a) of this Act by inserting in lieu of paragraph (4) the following:

"(4) such requirement, limitations, or conditions as are necessary to assure consistency with any site management plan approved pursuant to section 1412(c) of this title."

(2) Amend section 1414(a) by adding at the end thereof the following: "Permits issued under this title shall be for a period not to exceed two years."

(c) **WAIVER AMENDMENT.**—Amend section 1413(d) by striking all of the first sentence after "in the disposition of dredged material," and inserting in lieu thereof the following: "disposal at a site designated pursuant to section 1412(c)(1) in a manner which is not consistent with the requirements of a site management plan adopted pursuant to paragraph (3) of section 1412 of this title is necessary for the national defense he shall so certify and request a waiver from the Administrator for the specific requirements involved."

#### DREDGE AND FILL PROGRAM

**SEC. 205. SPECIAL MANAGEMENT OF CONTAMINATED MATERIAL.**—

(1) Add to the end of section 404 of the Federal Water Pollution Control Act the following new section:

"(u)(1) Within three hundred and sixty days of the date of enactment of this subsection, the Administrator shall revise the guidelines established pursuant to subsection (b) of this section to require that an applicant for a permit pursuant to this section proposing to dispose of dredge or fill material in coastal waters shall establish whether concentrations of the material contains pollutants in excess of the concentrations established in sediment standards pursuant to section 303(i)(1) of this Act.

"(2) If the Secretary finds that an applicant for a permit pursuant to this section proposes to dispose of contaminated material pursuant to paragraph (1) of this subsection, the Secretary, in consultation with the Administrator, shall consider, in addition to any guidelines established by the Administrator pursuant to subsection (b) of this section—

"(A) alternative locations for the disposal of such material, including sites designated pursuant to section 1412(c) of the Marine Protection, Research and Sanctuaries Act, which will minimize adverse impacts on the environment;

"(B) the potential for the disposal of the material to result in violations of water quality standards;

"(C) limitations on the schedule of operations which will mitigate and minimize adverse impacts on the environment;

"(D) limitations or management practices, including management practices identified pursuant to section 1412(f)(2) of the Marine Protection, Research and Sanctuaries Act, which will minimize the migration of contaminants from the disposal area or to water including isolation or capping of the contaminated material by uncontaminated material or disposal in upland areas;

"(E) requirements for long-term monitoring of contaminant concentrations at the disposal site, including maintenance of any management practices for preventing migration of contaminants; and

"(F) demonstration of financial capacity to assure the effective compliance with permit requirements in the short term and the long term.

"(3) In any case where the Secretary finds that material proposed for disposal is contaminated pursuant to paragraph (1) and the proposed disposal site is located within an area designated by the Administrator pursuant to section 320 of this Act, the Secretary shall deny such permit application."

#### TITLE III—OTHER PROVISIONS

##### STUDY OF AIR DEPOSITION

**SEC. 301. REPORT.**—The Administrator shall, within twenty-four months of the date of enactment of this Act, submit to the Congress a report which provides an assessment of the extent and seriousness of airborne deposition of contaminants in coastal waters.

##### IDENTIFICATION OF UNREGULATED CONTAMINANTS

**SEC. 302. AMENDMENT TO MARINE RESEARCH AUTHORITY.**—(1) Add to section 104(n) of the Federal Water Pollution Control Act the following new paragraphs—

"(5) The Administrator shall conduct such research and monitoring as needed to identify currently unregulated pollutants in the estuarine zone and coastal waters not currently addressed in a guideline developed pursuant to section 301 of this Act or a

standard developed pursuant to section 303 of this Act.

"(6) Within one year of the date of enactment of this paragraph, the Administrator shall submit to the Congress a report identifying unregulated pollutants in the estuarine zone and coastal waters and providing a plan (including specific actions and recommendations for legislation, schedules, and necessary budget commitments) for implementation of such controls as are necessary to protect a balanced, indigenous population of shellfish, fish, and wildlife and allow for recreational activities in and on the water."

(2) Insert in section 104(n) of the Federal Water Pollution Control Act the term "and coastal waters" following the term "estuarine zones" in each place that it appears.

#### RESEARCH OF MICROORGANISMS

SEC. 303. REPORT.—The Administrator shall, within twenty-four months of the date of enactment, submit to the Congress a report on the potential use of microorganisms to degrade pollutants such as organic material or chemical pollutants in municipal or industrial wastes both before and after disposal in the marine environment.

#### SECTION-BY-SECTION ANALYSIS OF MARINE PROTECTION ACT OF 1989

##### Section 1. Title and Table of Contents.

Section 2. Findings.—There is growing evidence of serious environmental problems in marine and coastal waters and there is a need to expand and strengthen programs for the protection of these waters.

Section 3. Definitions.—Key terms are defined.

#### TITLE I—WATER QUALITY PROTECTION PROGRAMS

Section 101: *National Estuary Program*—Amends the National Estuary Program (Sec. 320 of the Clean Water Act) to provide for an overall assessment of coastal waters and designation of those waters experiencing a general degradation of environmental conditions.

The Administrator is to monitor the conditions of designated waters and work with States to develop management conferences for these waters as under current law. In addition, the Administrator would exercise special authorities for the protection of designated waters including more stringent requirements for discharge permits, wetlands assessments, pretreatment, stormwater discharges, and nonpoint pollution control. A report to Congress on the status of the program is required on an annual basis.

The program authorization is increased from \$12 to \$25 million. In addition, new authority is provided for use of penalties paid by dischargers to designated waters for support of a National Estuaries Program Trust Fund.

Section 102: *Point Source Discharges to Coastal Waters*—Amends the Clean Water Act to specify a coastal discharge standards to apply to point source discharges in designated waters, including a showing of the "need to discharge" and "no net increase in pollutant loading". The new discharge standard would apply to all proposed, new discharges and to any increase in the toxicity or volume of existing discharges. A variance provision is provided.

Section 103: *Nonpoint Source Pollution Control*—Establishes a National Coastal Registry to provide information on land management practices for pollution prevention to owners of coastal land. This section also gives States new authority to review the impacts of proposed coastal projects to assess

water quality impacts prior to issuance of Federal flood insurance. In addition, the existing nonpoint control program (Sec. 319 of the Clean Water Act) is amended to give priority in grant funding to water designated under section 320 of the Act.

Section 104: *Marine Sanitation Devices*—Expands existing authority of section 312 of the Clean Water Act to establish a strict no discharge standard to vessels in waters designated under the new section 320 of the Act and provides for penalties for violations. EPA and the Coast Guard are to prepare a study assessing the availability of facilities for the removal of sewage from vessels.

Section 105: *Marine Combined Sewer Overflows*—Amends the Clean Water Act to require State agencies to inventory combined stormwater and sanitary sewer discharges to coastal waters and to assess the potential for eliminating the discharges.

EPA is to work with States and municipalities to develop specific programs for eliminating overflows with emphasis on water conservation and stormwater management, rather than discharge treatment. Discharges not eliminated under the management program are to have discharge permits and comply with secondary treatment or such additional treatment requirements as are necessary.

An existing marine combined sewer overflow authorization of \$200 million per year is directed toward development of discharge elimination programs. Implementation of the programs is eligible for funding under the State Revolving Loan funds under title VI of the Act.

Section 106: *Marine Water Quality and Sediment Quality Standards*—Requires EPA to develop and promulgate numerical standards for toxic and other pollutants in coastal waters and sediments.

Standards are to assure the protection and propagation of a balanced, indigenous population of fish, shellfish and wildlife and provide for recreation in and on the water. Standards would not have to be adopted by States, as under current law, but a more stringent State standard would apply over a Federal standard.

Section 107: *Ocean Discharge Criteria*—Expands the scope of ocean discharge standards under section 403 of the Clean Water Act to include coastal waters and clarifies that such discharges are to assure a balanced, indigenous population of fish, shellfish and wildlife.

#### TITLE II—MARINE SEDIMENT CONTAMINATION

Section 201: *Marine Sediment Criteria and Information*—Amends the Clean Water Act to require EPA to establish criteria and information for pollutants in marine sediment, similar to criteria and information already required to be developed for water quality.

Section 202: *Marine Sediment Contamination*—Amends the Marine Protection, Research and Sanctuaries Act to require that the Corps of Engineers determine if material to be dredged under the Act contains pollutants in excess of levels established in sediment standards under the Clean Water Act. Such contaminated material may be dumped in the ocean, but a permit for such dumping must be issued by the EPA and new authority is provided for EPA to require special management of such materials.

Section 203: *State Ocean Dumping Requirements*—Clarifies the Marine Protection, Research and Sanctuaries Act to assure that States may issue more stringent requirements for ocean dumping and that

EPA and the Corps of Engineers will comply with such requirements.

Section 204: *Site Designation*—Expands requirements for designation of dumping sites under the Marine Protection, Research and Sanctuaries Act.

EPA is to develop a site management plan for each site providing for baseline monitoring, special conditions for site management, and long-term management and termination of the site. Each site must be approved for dumping of materials determined to be contaminated.

Section 205: *Dredge and Fill Program*—Amends section 404 of the Clean Water Act to require an assessment of material to be dredged or filled to determine if it contains pollutants in excess of sediment standards. If contaminant standards are exceeded, additional factors are to be considered in granting a permit including disposal at an ocean site designated for dumping of contaminated material and measures to mitigate migration of contaminants.

#### TITLE III—OTHER PROVISIONS

Section 301: *Study of Air Deposition*—The Administrator is to submit to Congress within 24 months a report on the extent and seriousness of airborne deposition of contaminants in marine and coastal waters.

Section 302: *Identification of Unregulated Contaminants*—Within one year, the Administrator is to submit a report identifying unregulated contaminants in coastal waters and specifying a schedule for assessment of contaminants.

Section 303: *Research of Microorganisms*—The Administrator is to submit to Congress a report on the potential of microorganisms to degrade pollutants prior to discharge to marine waters.

By Mr. LAUTENBERG (for himself, Mr. MITCHELL, Mr. CHAFEE, Mr. MOYNIHAN, Mr. LIEBERMAN, Mr. GRAHAM, Mr. BRADLEY, Mr. D'AMATO, Mr. PELL, Mr. FOWLER, Mr. DODD, Mr. SARBANES, and Mr. COHEN):

S. 1179. A bill to establish a comprehensive marine pollution restoration program, to amend the Federal Water Pollution Control Act and the Marine Protection, Research, and Sanctuaries Act, and for other purposes; to the Committee on Environment and Public Works.

#### COMPREHENSIVE OCEAN ASSESSMENT AND STRATEGY (COAST) ACT

● Mr. LAUTENBERG. Mr. President, today I am introducing the Comprehensive Ocean Assessment and Strategy Act of 1989, otherwise known as COAST, and I am joining Senator MITCHELL in introducing the Marine Protection Act of 1989. These bills are designed to enhance our efforts for restoring the health of our marine waters.

I want to extend my appreciation to our majority leader for the leadership role he has taken to protect our coasts and for joining me in introducing COAST. As ranking minority member and then as chairman of the Environmental Protection Subcommittee, Senator MITCHELL was a prime advocate on behalf of the Clean Water Act

Amendments of 1987. During the last Congress under his leadership of the subcommittee, we passed the Plastic Pollution Research and Control Act, the Ocean Dumping Ban Act and the Shore Protection Act, all of which were enacted, and the Marine Research Act. GEORGE MITCHELL's commitment to our coasts is strong and determined.

Our marine waters, from the landward limits of our estuaries to our oceans, have a substantial and direct importance to the American people. The resources in these waters support commercial and recreational fishing, tourism, recreation, and related opportunities. They result in annual expenditures of tens of billions of dollars and unquantifiable enjoyment for our citizens. New Jersey's coastal tourist industry alone generates \$8 billion per year. The marine environment also performs important ecological functions by providing important habitat, nursery grounds, and food sources for a great diversity of plants, fish, birds, and other animal species.

Yet, it is clear that these resources are at risk. The events of the past few years have made clear that these waters are overburdened and fatigued. We see it in hundreds of dolphins dying mysteriously in the Atlantic and harbor seals in the Gulf of Maine with the highest pesticide levels of any U.S. mammal on land or in water. We see it in sea turtles and seabirds who have died from entanglement with or eating plastic debris in the ocean. We see it in diseased fish, fish which are too toxic to eat, massive fish kills, and closed shellfish beds. And we see it in garbage and medical waste invading our shores, closing our beaches, ruining vacations, injuring our tourist economy, and threatening our health.

The Office of Technology Assessment, in a 1987 report, concluded that the overall health of our coastal waters is "declining or threatened," and that "in the absence of additional measures, new or continued degradation will occur in many estuaries and some coastal waters around the country." OTA also determined that contamination of the marine environment has a wide range of adverse effects on birds and mammals, finfish and shellfish, aquatic vegetation, and benthic organisms. Finally, OTA concluded existing programs, even if fully implemented, are not adequate to maintain and improve our coastal waters.

The Congress has taken a number of important actions to deal with this problem:

We stopped all dumping of industrial waste and closed the old 12-mile sludge dumpsite, and we're on the road to ending all ocean dumping of sewage sludge.

We overrode a veto of the Clean Water Act which provides funding for sewage treatment facilities, establishes

a nonpoint source pollution program, strengthens the act's enforcement mechanisms, requires EPA and the States to address toxic hotspots, and requires EPA to establish a permit system to regulate stormwater discharges.

We rejected attempts to sharply cut sewage treatment funds and we're providing the funding for these facilities, and to correct combined sewer overflows.

We prohibited the dumping of plastics and other garbage in the water, required garbage barge operations to take actions to keep garbage out of the water, and forced the Corps of Engineers to collect floating debris in New York Harbor to keep garbage off east coast beaches.

And we established a demonstration program to track medical wastes and instituted tough penalties to prevent our beaches from being invaded by this disgusting material.

But additional programs are necessary to respond to the suggestions made by the OTA and by others including a national coalition of environmental groups which issued a report, "Saving Our Bays, Sounds, and the Great Lakes: A National Agenda." My legislation, COAST, includes a number of these recommendations:

EPA would establish marine areas in need of protection, areas where pollution or floatables are impeding water uses. States would develop and implement management strategies for these areas so that the area no longer needed additional protection.

EPA would use the section 313, Toxics Release Inventory, to prepare an assessment of sources and geographical areas of marine toxic pollution and a strategy to use this information to improve its existing water programs.

EPA would accelerate its establishment of marine water quality criteria and begin to prepare sediment and living marine resource biological quality criteria which the States will use to establish State standards. These standards are used to establish limits on discharges into coastal waters.

The existing provisions in the Clean Water Act pertaining to preventing degradation of ocean waters from ocean discharges would be extended inland into estuaries and harbors and the provisions would be expanded to emphasize source reduction.

EPA would be required to identify for the Secretary of the Agriculture lands the Secretary should retire from production under the existing Conservation Reserve Program because they are a source of nonpoint source pollution. The Secretary would have to respond in writing to the Administrator's recommendations.

Discharges from marine combined sewer overflows [CSO's] would have to be eliminated. Marine CSO's are dis-

charges from combined stormwater sewers and sanitary sewers into the marine environment. After a heavy enough rain, a sewage treatment plant cannot handle all of the water in the combined sewer system and some of the water is discharged directly into our waterways without any treatment. CSO's are a significant source of floatables in the marine environment.

EPA and the States would be required to strengthen pretreatment programs in areas where they determine that sewage facility discharges are contributing to the degradation of the marine environment.

Stormwater discharges not being regulated under the existing stormwater program and which are contributing to the degradation of marine waters would be regulated. Stormwater discharges are an important source of floatables and nonpoint source pollutants in the marine environment.

EPA and NOAA would establish programs to monitor atmospheric sources of pollution to marine waters, and floatables, and to conduct a study of the economic impact caused by marine degradation.

NOAA would establish a marine pollution information transfer program.

EPA and NOAA would conduct a study of Federal agency programs which may affect the marine environment. Federal agencies would be required to consider alternatives to avoid adverse affects to the marine environment.

Criminal penalties for violations of the Ocean Dumping Act would be increased.

The bill authorizes \$85 million per year. State revolving loan funding provided under the Clean Water Act would be available to States for implementation of management strategies for marine areas in need of protection and marine combined sewer overflow programs.

Senator MITCHELL's Marine Protection Act contains a number of similar provisions.

Mr. President, we must respond positively to the problems identified by OTA and others if we want to preserve the economic, recreational aesthetic, and ecological values of our marine environment. As chairman of the subcommittee which has jurisdiction over coastal pollution issues, I intend to work closely with Senator MITCHELL and other members of the Senate Environment Committee to meld the best aspects of both my bill and Senator MITCHELL's bill and to move this legislation.

I urge my colleagues who share our concern about our coastal environment to join us in this effort.

I ask unanimous consent that the Comprehensive Ocean Assessment and Strategy Act of 1989 as well as a sec-

tion-by-section analysis of the bill be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### S. 1179

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. (a) TITLE.—This Act may be cited as the "Comprehensive Ocean Assessment and Strategy (Coast) Act of 1989".

#### (b) TABLE OF CONTENTS.—

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings.
- Sec. 3. Policy.
- Sec. 4. Definitions.
- Sec. 5. National marine environment assessment.
- Sec. 6. Marine toxics release inventory assessment and strategy.
- Sec. 7. Marine quality criteria and standards.
- Sec. 8. Marine pollutant discharge criteria.
- Sec. 9. Nonpoint source pollution.
- Sec. 10. Marine combined sewer overflows.
- Sec. 11. Pretreatment requirements.
- Sec. 12. Marine stormwater discharges.
- Sec. 13. Marine monitoring, research and studies.
- Sec. 14. Information transfer.
- Sec. 15. Federal agency responsibilities.
- Sec. 16. Ocean dumping penalties.
- Sec. 17. Authorization.

#### FINDINGS

- SEC. 2. The Congress finds that—
- (1) the marine environment has substantial and direct importance to a large segment of the American population;
  - (2) the resources in the marine environment support commercial and recreational fishing, tourism, recreation, and related opportunities, and generate annual expenditures of tens of billions of dollars;
  - (3) the marine environment performs important ecological functions and living marine resources have significant ecological value;
  - (4) many areas in the marine environment have been degraded by numerous sources of waste disposal activities, agricultural practices, freshwater diversions, inadequately controlled development, habitat destruction and other actions adversely affecting their commercial, recreational, and ecological values; and
  - (5) according to the Office of Technology Assessment, in the absence of additional actions, the marine environment will become increasingly degraded.

#### POLICY

SEC. 3. It is the policy of the United States to restore, maintain, and protect the integrity of the marine environment so that full use of the ecological, commercial, and recreational values of its resources is not impaired by pollution.

#### DEFINITIONS

- SEC. 4. For purposes of the Act—
- (1) the term "Administrator" means the Administrator of the Environmental Protection Agency;
  - (2) the terms "degraded" and "degradation" means conditions in the waters, sediments, and living marine resources of an area of the marine environment which do not—
  - (A) assure protection of public health, public water supplies, and agricultural and industrial uses;

- (B) assure the protection and propagation of a balanced indigenous population of fish, shellfish and wildlife; and

- (C) allow recreational activities in and on the water;

- (3) the term "floatable" means marine debris that float or remain suspended in the water column;

- (4) the term "Federal agency" means any department, agency, or other instrumentality of the Federal Government;

- (5) the term "living marine resource" means fish, shellfish, marine mammals, birds, wildlife, and plants which are located in or use the marine environment for all or part of their lives;

- (6) the term "marine areas in need of protection" means an area of the marine environment designated by the Administrator pursuant to section 5(a) of this Act which requires additional measures to manage or control sources of pollutants because the area is or is likely to become degraded;

- (7) the term "marine combined sewer overflow" means a discharge from combined stormwater sewers and sanitary sewers into the marine environment;

- (8) the term "marine environment" means the waters, sediments, and living marine resources found in the estuarine zone as that term is defined in section 320(k) of the Federal Water Pollution Control Act, the territorial sea and the United States Exclusive Economic Zone;

- (9) the term "pollutant" shall have the same definition as in section 502(6) of the Federal Water Pollution Control Act; and

- (10) the term "Under Secretary" means the Under Secretary of Commerce for Oceans and Atmosphere who serves as the Administrator of the National Oceanic and Atmospheric Administration.

#### NATIONAL MARINE ENVIRONMENT ASSESSMENT

SEC. 5. (a) IDENTIFICATION.—The Administrator, in close cooperation with the Under Secretary, shall, within twelve months of the enactment of this Act, and thereafter as part of each report submitted to Congress pursuant to section 305(b) of the Federal Water Pollution Control Act, designate marine areas which are in need of protection.

(b) DESIGNATION CRITERIA.—(1) In designating such marine areas, the Administrator and the Under Secretary shall consider—

- (A) the status and trends of the amount, type, and extent of pollutants found in the water, sediments, and living marine resources including information provided in the national toxics release inventory established pursuant to section 313 of the Superfund Amendments and Reauthorization Act of 1986;

- (B) the likely effect of these pollutants on human health, living marine resources, and commercial and recreational opportunities, and marine ecological values;

- (C) loss of coastal habitat;
- (D) changes in living marine resources in the area;

- (E) whether the presence of floatable in the area is adversely affecting commercial and recreational opportunities; and

- (F) anticipated increases in pollutants and floatables in the area.

(2) The Administrator shall designate as a marine area in need of protection:

- (A) any area of the marine environment for which the State's most recent Water Quality Inventory, prepared pursuant to section 305(b) of the Federal Water Pollution Control Act reported that the waters did not achieve water quality, sediment quality and living marine resource biological quality standards, and

- (B) any estuary for which a management conference has been convened pursuant to the National Estuary Program established by section 320 of the Federal Water Pollution Control Act.

(3) The Administrator and the Under Secretary shall seek the views of Governors and the public prior to completing each assessment of marine areas in need of protection.

(4) In designating any such area, the Administrator shall specify the reason for, and to the extent known, the sources of pollution resulting in the designation.

(c) NATIONAL ASSESSMENT.—The Administrator shall submit to the Congress together with the report required by section 305(b) of the Federal Water Pollution Control Act, an analysis which lists each area designated pursuant to this section, assesses trends in degradation, identifies research and monitoring needs, describes actions taken pursuant to the Comprehensive Ocean Assessment and Strategy Act and other laws, and State efforts to develop and implement strategies for marine areas in need of protection, identifies additional actions which need to be taken to end marine degradation including problems associated with floatables, sets out a plan for future actions, and recommends legislative changes and budgetary needs.

(b) Section 304 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(n) MANAGEMENT STRATEGIES FOR MARINE AREAS IN NEED OF PROTECTION.—

"(1)(A) Not later than eighteen months after the date of a designation of an area as a marine area in need of protection, each State shall, after notice and an opportunity for public comment, submit to the Administrator for review and approval an individual management strategy that the State will implement for each area under its jurisdiction designated under section 5 of the Comprehensive Ocean Assessment and Strategy Act. The strategy shall establish priorities and schedules for addressing pollution sources.

"(B) The strategy shall include establishment of technology-based and water quality effluent limitations, implementation of nonpoint source management programs, monitoring requirements for permittees and such other measures provided for under this Act as may be necessary so that the area no longer needs additional protection as soon as possible, but not later than three years after the date of establishment of such strategy.

"(C) The strategy must demonstrate that adequate authority exists and adequate resources are available to implement the strategy.

"(D) In developing the strategy under this section, the State shall utilize existing reports, data and studies and may utilize appropriate elements of any other plan approved under this Act to the extent such elements are consistent with and fulfill the requirements of this section and are related to the designated marine area in need of protection.

"(2) Not later than one hundred and twenty days after the last day of the period referred to in paragraph (1), the Administrator shall approve the management strategies submitted under paragraph (1) by any State if the strategy meets the requirements of this section.

"(3) If a State fails to submit a management strategy in accordance with paragraph (1) or the Administrator does not approve

the management strategy submitted by such State, then, not later than one year after the last day of the period referred to in paragraph (2), the Administrator, in cooperation with such State and after notice and opportunity for public comment, shall develop and implement a management strategy pursuant to the requirements of paragraph (1) in such State.

"(4) The Administrator shall prepare and implement a management strategy pursuant to this subsection for any marine area in need of protection not under the jurisdiction of any State."

(c) Section 320 of the Federal Water Pollution Control Act is amended—

(1) by adding at the end of subparagraph (2)(B) the following new subparagraph:

"(C) MARINE AREA IN NEED OF PROTECTION.—The Administrator shall select an estuary and convene a management conference for an estuary which is located in the waters of more than one State and which is designated as a marine area in need of protection pursuant to section 5 of the Comprehensive Ocean Assessment Strategy Act."

(2) by inserting in paragraph (b)(4) before the comma the following: "and demonstrate that each State participating in a management conference has adequate authority and resources to implement the plan."

#### MARINE ENVIRONMENT TOXICS RELEASE INVENTORY ASSESSMENT AND STRATEGY

SEC. 6. (a) Within six months of the enactment of this bill, the Administrator shall prepare and submit to the Congress a Marine Environment Toxics Release Inventory Assessment and Strategy.

(b) The Assessment shall contain an analysis of the industrial categories of sources and receiving waters of discharges of toxics emissions into the marine environment and into publicly owned treatment works which discharge into the marine environment. The Assessment shall identify those categories of sources which discharge the greatest amount of toxic chemicals on the Toxics Release Inventory and the greatest amount of the most toxic of the chemicals on the Inventory. It also shall identify geographical areas receiving the greatest amount of discharges from chemicals on the Inventory.

(c) The Strategy shall contain the Administrator's detailed plan for using the information in the Assessment to improve the Environmental Protection Agency's pollution programs affecting the marine environment. The Strategy shall include plans to:

(1) verify information in permits issued by the Administrator or the State, as the case may be, pursuant to section 402 of the Federal Water Pollution Control Act;

(2) improve the program of individual control strategies for toxic pollutants established pursuant to section 304(1) of the Federal Water Pollution Control Act;

(3) identify other regulatory programs needing improvement including programs for toxic and pretreatment effluent standards established pursuant to section 307 of the Federal Water Pollution Control Act and to adopt measures to improve those programs;

(4) establish marine water quality criteria for toxic chemicals from the Inventory discharged in the greatest amounts;

(5) use the information in the Inventory to target compliance and enforcement actions; and

(6) establish programs to reduce the amount of toxic chemicals generated by industries identified in the Assessment.

#### MARINE QUALITY CRITERIA AND STANDARDS

SEC. 7. (a) Section 304(a) of the Federal Water Pollution Control Act is amended by:

(1) in paragraph (1) adding after the word "quality" the following: ", including criteria for marine water quality, marine sediment quality, and living marine resource biological quality, which will protect the marine environment from degradation."

(2) adding at the end thereof the following:

"(9)(A) Within six months of enactment of the Comprehensive Ocean Assessment and Strategy Act, the Administrator shall submit a plan to the Senate Committee on Environment and Public Works, the House Committee on Public Works and Transportation, and the House Committee on Merchant Marine and Fisheries a detailed five-year schedule for the development of the criteria called for in paragraph (1).

"(B) In developing this schedule, the Administrator shall consult with the Under Secretary and the Governors of coastal States.

"(C)(1) The Administrator shall give priority to develop criteria for those pollutants in water, sediments, and living marine resources which pose the greatest threat of degradation to the marine environment.

"(2) The Administrator shall also consider the Marine Environment Toxics Release Inventory Assessment and Strategy prepared pursuant to section 6 of the Comprehensive Ocean Assessment and Strategy Act.

"(D) The Administrator shall review and revise existing criteria or develop new criteria for water, sediments, and living marine resources, as appropriate, within three years of the date of enactment of the Comprehensive Ocean Assessment and Strategy Act for the following pollutants:

(1) Halogenated compounds (excluding pesticides)—

(i) Brominated dioxins.

(ii) Dioxins.

(iii) Hexachlorobenzene.

(iv) PCBs.

(v) Trichlorobenzene.

(vi) Trichlorophenol.

(2) Polycyclic compounds—

(i) Nitrogen-containing heterocyclic compounds.

(ii) PAHs (including benzofurans, benzopyrenes, phenanthrene).

(3) Metals—

(i) Alkylated lead.

(ii) Antimony.

(iii) Arsenic.

(iv) Cadmium.

(v) Copper.

(vi) Mercury.

(vii) Selenium.

(viii) Tributyltin (and other organotins).

(4) Pesticides—

(i) DDT and metabolites.

(ii) Dieldrin.

(iii) Diflubenzuron (Dimilin).

(iv) Methoxychlor.

(v) Mirex.

(vi) Oxygen analogs of organophosphates.

(vii) Toxaphene.

(viii) Molting hormones.

(5) Others—

(i) Azo compounds.

(ii) DEHP.

(iii) Diphenyl ethers.

(iv) Terphenyls.

(v) Nutrients including nitrogen and phosphorous.

(b) Section 303 of the Federal Water Pollution Control Act is amended by adding the following new section:

"(i) MARINE WATER, SEDIMENT AND LIVING MARINE RESOURCE QUALITY STANDARDS.—(1) Within two years of the establishment of marine water, sediment, or living marine resource biological criteria pursuant to section 304(a), each coastal State shall establish a numerical standard for such pollutant to prevent degradation of the marine environment.

"(2) If a coastal State fails within two years of establishment of any criteria to adopt a numerical standard pursuant to paragraph (1), the Administrator shall designate the standard for such State within one year of the State's failure to act in the prescribed period.

"(3) The Administrator shall promulgate standards in areas of the marine environment not under the control of any State."

(c) Section 302(a) of the Federal Water Pollution Control Act is amended by adding after "section 304(l)" the following: "or section 303(i) or section 304(n)".

#### MARINE POLLUTANT DISCHARGE CRITERIA

SEC. 8. (a) Section 301(a) of the Federal Water Pollution Control Act (33 U.S.C. 1311(a)) is amended by inserting "403" before "404."

(b) Section 403 of the Federal Water Pollution Control Act (33 U.S.C. 1343) is amended by—

(1) adding "(1)" after "(a)";

(2) adding a new paragraph "(2)" as follows:

"(2) In addition to any other requirements of this Act, beginning one year after the date of enactment of this paragraph, no permit shall be issued under section 402 of this Act for a discharge into the marine environment, if the Administrator finds, based on an assessment of the criteria provided in subsection (c), that the discharge can reasonably be expected to result in the degradation of the marine environment or that the discharge is reasonably likely to prevent the attainment of any standards established pursuant to section 303 of this Act."

(3) deleting "territorial sea" and inserting in lieu thereof "marine environment" in subsection (b);

(4) deleting "waters of the territorial seas, the contiguous zone, and the oceans" and inserting in lieu thereof "the marine environment" in subsection (c);

(5) striking out "and" at the end of subparagraph (F) in subsection (c)(1), by striking out the period at the end of subparagraph (G) and inserting in lieu thereof "and" and by inserting at the end thereof the following new subparagraph:

"(H) The potential application of measures, processes, methods, systems, or techniques including, but not limited to, measures which—

"(i) eliminate the discharge altogether or reduce the volume and amounts of such pollutants through process changes, substitution of materials or other modifications,

"(ii) enclose systems or processes to eliminate discharges, and

"(iii) collect, capture or treat such pollutants when discharged."

(6) adding at the end of paragraph (c)(2) the following: "Any monitoring required as a condition of the permit shall not discharge the requirement of the preceding paragraph."; and

(7) inserting at the end of the section the following:

"(3) The Administrator shall, within one year after enactment of the Comprehensive Ocean Assessment and Strategy Act, and after notice and opportunity for public com-

ment, revise the guidelines under this section."

#### NONPOINT SOURCE POLLUTION

SEC. 9. (a) Section 319(g)(1) of the Federal Water Pollution Control Act is amended by—

(1) inserting after "standards" the following: ", marine sediment standards, or living marine resource biological quality standards,"; and

(2) inserting after the word "Act" the following: "or is degraded due to the presence of floatables."

(b) Section 319(h)(5) of the Federal Water Pollution Control Act is amended by—

(1) striking "or" in subparagraph (C);

(2) striking the period at the end of subparagraph (D) and inserting in lieu thereof "; or"; and

(3) by inserting the following new subparagraph—

"(E) control nonpoint source pollution of waters determined to be in need of protection pursuant to section 5 of the Comprehensive Ocean Assessment and Strategy Act."

(d) Section 319(k) of the Federal Water Pollution Control Act is amended by—

(1) inserting "(1)" after subsection (k); and

(2) adding the following new paragraph:

"(2)(A) The Administrator shall provide technical assistance to the Secretary of Agriculture in utilizing the Secretary's authorities to reduce cropland sources of nonpoint source pollution of the marine environment, consistent with subtitle D of title 12 of the Food Security Act (16 U.S.C. 3831-3836).

"(B) The Administrator shall identify, based on the assessment reports submitted by the States and approved by the Administrator or developed by the Administrator for the States pursuant to subsections (a), (d) and (e) of this section, and such other information as is available to the Administrator, those lands which, if enrolled in the Conservation Reserve Program, would contribute to the protection of water quality and the marine environment by reducing nonpoint source pollution. Where appropriate, the lands identified may include lands that are not erodible but that pose an off-farm environmental threat, pursuant to section 1231 (c)(2) of the Food Security Act (16 U.S.C. 3831(c)(2)).

"(C)(1) The Administrator shall furnish the list of such identified lands to the Secretary of Agriculture for purposes of assisting the Secretary in establishing priorities for expenditures under the Conservation Reserve Program and shall make such lists available to the States and the public.

(2) The Secretary shall provide the Administrator within six months of receiving the Administrator's list with the actions the Secretary will take to respond to the list. The Secretary shall provide a detailed explanation of any recommendation made by the Administrator which the Secretary will not implement.

#### MARINE COMBINED SEWER OVERFLOWS

SEC. 10. (a) Section 304 of the Federal Water Pollution Control Act is amended by adding the following new subsection.

"(o) MARINE COMBINED SEWER OVERFLOWS.—(1) For the purpose of adopting or revising effluent limitations for marine combined sewer overflows under this Act, the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of enactment of this subsection regula-

tions to eliminate such overflows. Such regulations shall require—

"(A) proper operation and regular maintenance programs for the sewer system and the marine combined sewer overflow discharge points;

"(B) maximum use of the collection system for storage;

"(C) maximization of flow to the publicly owned treatment work for treatment;

"(D) prohibition of dry weather overflows; and

"(E) screening or other interim measures to control floatables in marine combined sewer overflow discharges.

"(2) Within one year of enactment of this section, the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish guidance on additional marine combined sewer overflow control measures that should be considered to bring marine combined sewer overflow discharges into compliance with all of the requirements of this Act. The guidance shall include, but not be limited to—

"(A) sewer separation;

"(B) improved operation and maintenance;

"(C) system-wide storm water management programs; including decentralized stormwaters detention basins, buffer strips and related controls;

"(D) pretreatment program modifications;

"(E) sewer ordinances;

"(F) flow minimization and hydraulic improvements, including domestic wastes conservation programs;

"(G) direct treatment of overflows;

"(H) sewer rehabilitation including inflow and infiltration reduction measures;

"(I) reduction of tidewater intrusion;

"(J) construction of combined sewer overflow controls within the sewer system or at the combined sewer overflow discharge point; and

"(K) construction of detention basins.

"(3) Guidance issued pursuant to paragraph (2) shall identify monitoring standards for marine combined sewer overflow discharges. Monitoring standards should be designed to—

"(A) characterize discharges, including this frequency, duration and pollutant loadings;

"(B) evaluate water quality impacts of these discharges; and

"(C) determine compliance with permit requirements."

(b) The Federal Water Pollution Control Act is amended by adding the following new section after section 320:

#### "SEC. 321. MARINE COMBINED SEWER OVERFLOWS.

"(a) MARINE COMBINED SEWER OVERFLOW INVENTORY.—Each State with a marine combined sewer overflow shall, within six months of the date of enactment of this section and not later than every two years thereafter, submit to the Administrator an inventory of all such discharges in the State which shall include—

"(1) identification of the location of each such discharge and the receiving waterbody;

"(2) identification of the entity or entities which own and operate the marine combined sewer overflow system;

"(3) a determination whether each discharge point is—

"(A) not permitted;

"(B) permitted in conjunction with a publicly owned treatment work; or

"(C) permitted separately from a publicly owned treatment work; and

"(4) a determination whether each discharge point is in compliance with sections 301, 302, and 403.

"(b) PRIORITIES.—Each permitting authority shall establish a schedule to bring each marine combined sewer overflow discharge point into compliance with this Act. The permitting authority shall establish priorities for issuing permits and controlling discharges, based on an evaluation of known or suspected impacts from marine combined sewer overflow systems using estimates of flows, frequencies, durations and pollutant loadings."

(c) Section 402 of the Federal Water Pollution Control Act is amended by adding the following new subsection:

"(o) MARINE COMBINED SEWER OVERFLOW DISCHARGES.—(1) Each municipality or publicly owned treatment works (in any case where a marine combined sewer system is owned or operated by more than one municipality) identified pursuant to section 321, shall develop and submit to the Administrator or the State (in the case of a permit program approved under section 402 of this Act) a permit application within two years after the date of enactment of this section consistent with section 304(o) containing a program for the elimination of all discharges from the marine combined sewer overflow.

"(2) Where a marine combined sewer overflow system is owned and/or operated by more than one authority, each owner and operator shall assist in the preparation of an application pursuant to this section. The application shall specifically define the responsibilities and duties of each owner and operator and each individual owner and operator is responsible for the discharge coming from its marine combined sewer overflow system.

"(3) Each applicant shall submit a schedule for developing and implementing monitoring requirements and measures, and practices consistent with section 304(o) and any applicable water, sediment or living marine resource biological quality standards at the earliest practicable date but in no case more than five years from the date of submission of the application. The application shall include cost estimates for each control measure.

"(4) The Administrator or the State (in the case of any permit program approved under section 402 of this Act) shall issue a permit only if the application—

"(A) meets the requirements of section 304(o);

"(B) meets the requirements of any water, sediment or living marine resource biological quality standards including any requirements established pursuant to section 304(l);

"(C) demonstrates through an appropriate compliance schedule that the requirements of the Act will be achieved as expeditiously as possible but in no event later than seven years after enactment of this section;

"(D) includes any appropriate interim control measures including screening to control floatables and disinfectant;

"(E) includes adequate monitoring requirements and a reopener clause to adjust permit limits as a result of monitoring; and

"(F) demonstrates that adequate authority and financial resources are available to implement the control measures.

"(5) Any owner or operator of a marine combined sewer overflow who does not have a permit within thirty six months after the date of enactment of this section or who fails to meet the requirements of a compli-

ance schedule shall be subject to penalties pursuant to section 309 of this Act."

"(6) Nothing in this subsection relieves or reduces the obligation of any person to comply with any requirements of this Act."

#### PRETREATMENT REQUIREMENTS

SEC. 11. Section 307 of the Federal Water Pollution Control Act is amended by adding at the end thereof, the following new subsection:

"(f)(1) When the Administrator or the State, as the case may be, determines that any publicly owned treatment work discharges toxic pollutants contributing to the degradation of the marine environment or the violation of a marine water, sediment, or living marine resource biological standard, the Administrator or the State shall require the publicly owned treatment works to establish or revise its pretreatment program within one year to eliminate the pollutants contributing to the degradation or the violation of the standard.

"(2) A pretreatment program required by paragraph (1) shall include the following requirements as appropriate:

"(A) individual discharge permits to discharges into the publicly owned treatment works;

"(B) additional or revised local limits to control the discharge of toxic pollutants into publicly owned treatment works;

"(C) random sampling and/or inspection of industrial users;

"(D) development of enforcement response plans;

"(E) additional reporting requirements by industrial users;

"(F) notification by industrial users of any discharge into the publicly owned treatment works of a substance which is a listed or characteristic waste under section 3001 of the Resource Conservation and Recovery Act; and

"(G) notification by industrial users in advance of any substantial change in the volume or character of pollutants in their discharge.

"(3) Nothing in this subsection shall affect any obligations established under this Act.

"(g)(1) The Administrator shall develop and test guidelines for publicly owned treatment works to identify the sources of toxics found in waste waters.

"(2) The Administrator shall establish a data base of sources of toxics in waste water which have been identified by publicly owned treatment works."

#### MARINE STORMWATER DISCHARGES

SEC. 12. Section 402(p) of the Federal Water Pollution Control Act is amended by—

(1) adding at the end of paragraph (2) the following:

"(E) A discharge from a municipal separate storm sewer system into waters of a marine area in need of protection, as defined in section 5 of the Comprehensive Ocean Assessment and Strategy Act, and for which the Administrator or the State, as the case may be, determines is reasonably likely to be contributing to the violation of marine water, sediment, or living marine resource quality biological standards or the degradation of the marine environment;"

and

(2) adding at the end of paragraph (4) the following:

"(C) MARINE AREAS IN NEED OF PROTECTION.—Not later than two years after the date of enactment of this subsection, the Administrator shall establish regulations setting forth the permit application require-

ments for stormwater discharges described in paragraph (2)(F). After the promulgation of these regulations, applications for permits for such discharges shall be filed no later than sixty days after the designation of the stormwater discharge."

#### MARINE MONITORING, RESEARCH AND STUDIES

SEC. 13. (a)(1) ATMOSPHERIC POLLUTANTS.—The Administrator and the Under Secretary shall establish and implement a joint program of research and monitoring to determine the effects of atmospheric pollutants, including atmospheric nutrient and toxicant deposition, on degradation of the marine environment.

(2) The program shall include—

(A) development of an atmospheric pollutant deposition measurement methodology;

(B) development and implementation of a coastal atmospheric dry and wet deposition monitoring network; and

(C) research on—

(i) sources and deposition rates (including seasonal and temporal variations) of atmospheric pollutants;

(ii) the fate and transport of atmospheric pollutants including the modeling of transport and deposition at a scale compatible with water quality modeling;

(iii) the relative contribution of atmospheric pollutants to the total pollution loadings; and

(iv) the biological and ecological effects of atmospheric pollutants.

(3) The Administrator and the Under Secretary shall submit a report to the Senate Committee on Environment and Public Works, the House Committee on Public Works and Transportation, and the House Committee on Merchant Marine and Fisheries describing their monitoring and research program within two years of enactment of this Act and every two years thereafter.

(b) FLOATABLES MONITORING.—(1) The Administrator, in cooperation with the Under Secretary, State and local governments, and the public, shall establish a systematic nationwide system for monitoring and quantifying the accumulation of floatables along coastal shorelines and waterways and the costs of cleanup of floatables. The program shall include the development of standard protocols to conduct surveys to allow quantitative geographic and temporal comparisons and a public education program.

(2) The Administrator shall submit a report to the Congress within two years of the enactment of this section describing the monitoring program and the results of monitoring undertaken after enactment of this section. The Administrator shall report annually describing changes in the monitoring program and trends of floatables accumulation.

(c) MONITORING PROTOCOLS.—(1) The Administrator, in consultation with the Under Secretary, shall promulgate protocols for monitoring water, sediments and living marine resources in the marine environment within two years of the enactment of this section.

(2) Protocols promulgated under the subsection shall require use of whole effluent biological toxicity testing.

(3) Protocols promulgated under this subsection may establish different requirements based on the size, location and amount and source of the discharge.

(4) Within six months after the promulgation of such protocols, monitoring of the marine environment by Federal, State and local agencies and by any person required to conduct monitoring under this Act, the Federal Water Pollution Control Act or the

Marine Protection, Research and Sanctuaries Act, shall be conducted consistent with the protocols.

(d) HEALTH IMPACTS STUDY.—The Under Secretary, in collaboration with the Administrator and the Secretary of Health and Human Services, shall undertake a study to determine the nature of any relationship between contact with pollutants in the marine environment and shellfish consumption with the incidence of human illnesses. The Administrator shall submit a report to the Senate Committee on Environment and Public Works, the House Committee on Public Works and Transportation, and the House Committee on Merchant Marine and Fisheries within two years of enactment of this section.

(e) ECONOMIC IMPACT STUDY.—The Under Secretary, in consultation with the Administrator, State and local governments, commercial and recreational fisherman and other interested persons, shall submit to the Congress within one year of enactment of this section a study which quantifies the economic impacts caused by marine degradation including floatables.

(f) ALGAL BLOOM STUDY.—The Under Secretary shall conduct a study of the impact that enhanced nitrogen levels in the marine environment may have on stimulating toxic algal blooms. The Under Secretary shall submit a report to Congress on the study's conclusions within two years of the enactment of this Act.

#### INFORMATION TRANSFER

SEC. 14. The Under Secretary shall establish a Marine Environment Information Center to compile, analyze, and disseminate information on assessing marine degradation, on methods, practices and techniques effective in restoring and protecting the marine environment and on other issues related to marine environment degradation. The Under Secretary shall use the Center to—

(1) transfer marine degradation analyses, assessments and technology and practices,

(2) mount active outreach and education programs to the state and local governments and other appropriate agencies and organizations to improve progress to address marine environmental degradation, and

(3) make available to the public such information on marine environmental degradation as may be available.

#### FEDERAL AGENCY RESPONSIBILITIES

SEC. 15. (a) STUDY OF FEDERAL AGENCY PROGRAMS.—(1) The Administrator and the Under Secretary shall conduct a comprehensive study of the policies, programs and activities of each Federal agency that may result in degradation of the marine environment. The study shall specifically examine the mechanisms, policies, programs and activities that contribute to degradation of the marine environment.

(2) Within eighteen months of the enactment of this Act, the Administrator and the Under Secretary shall submit to Congress a report describing the conclusions of the comprehensive study and recommendations they have to reduce degradation of the marine environment from Federal agencies' policies, programs and activities. The report shall include—

(A) a comprehensive listing of each Federal agency's policies, programs and activities that were considered during the study to affect degradation in the marine environment;

(B) a detailed analysis of the impacts of each Federal agency's policies, programs,

and activities on degradation of the marine environment;

(C) proposed changes in each Federal agency's policies, programs and activities to minimize these impacts;

(D) suggested actions to be taken by other Federal or State agencies in order to better coordinate all policies, programs, and activities that affect degradation of the marine environment; and

(E) specific recommendations for further legislative actions necessary to bring each Federal agency's policies, programs and activities into conformance with the policy of this Act.

(3) In conducting their reviews, the Administrator and the Under Secretary shall seek the views of States and the public on ways in which each Federal agency's policies, programs and activities can be implemented to reduce degradation in the marine environment.

(b) **FEDERAL AGENCY LEADERSHIP.**—Each Federal agency shall provide leadership and take action to the extent provided by law to minimize degradation of the marine environment and to restore and preserve the natural and beneficial values served by the marine environment in carrying out its responsibilities for—

(1) acquiring, managing, and disposing of Federal lands and facilities;

(2) providing federally undertaken, financed, or assisted construction and improvements; and

(3) conducting Federal activities and programs affecting the marine environment.

(c) **FEDERAL AGENCY RESPONSIBILITY.**—In carrying out the activities described in subsection (b), each agency has a responsibility to evaluate the potential effects of any action it may take in or which may affect the marine environment, to ensure that its planning programs and budget requests reflect of the policy of this Act.

(d) **ALTERNATIVES AND MITIGATION.**—If a Federal agency has determined to or proposed to, conduct, support or allow an action which may affect the marine environment, the Federal agency shall consider alternatives to avoid adverse effects on the marine environment. If the agency finds that there is no practicable alternative consistent with the law, the Federal agency shall modify its actions to the extent consistent with law to minimize the potential adverse effects in the marine environment.

#### OCEAN DUMPING PENALTIES

SEC. 16. Section 105(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1415(b)) is amended to read as follows:

"(b) In addition to any action which may be brought under subsection (a), any person—

"(1) who knowingly violates this title, regulations promulgated under this title, or a permit issued under this title shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both; and

"(2) convicted of such a violation shall forfeit to the United States any property constituting or derived from any proceeds the person obtained, directly or indirectly, as a result of such violation, and any of the property of the person which was used, or intended to be used in any manner or part, to commit or to facilitate the commission of the violation."

#### AUTHORIZATION

SEC. 17. (a) **AUTHORIZATION.**—There are authorized to be appropriated the following sums to carry out this Act:

(1) \$30 million to the Environmental Protection Agency for fiscal years 1990, 1991, 1992, 1993, and 1994;

(2) \$15 million to the Under Secretary for fiscal years 1990, 1991, 1992, 1993 and 1994;

(3) \$40 million to the Administrator to issue grants to states for fiscal years 1990, 1991, 1992, 1993, and 1994 to develop and implement management strategies for marine areas in need of protection pursuant to section 304(n) of the Federal Water Pollution Control Act. The amount of grants to any state shall not exceed 50 per centum of the costs of the program and the non-Federal share of such costs may not be provided from any Federal source.

(b) **ELIGIBILITY FOR STATE REVOLVING LOAN FUNDS.**—(1) Section 601(a) of the Federal Water Pollution Control Act is amended by striking "and (3)" and inserting in lieu thereof:

"(3) for developing and implementing a conservation and management plan under section 320, (4) for developing and implementing a management strategy under section 304(n), and (5) implementing a marine combined sewer overflow correction program."

(2) Section 603(c) of the Federal Water Pollution Control Act is amended by striking "and (3)" and inserting in lieu thereof:

"(3) for developing and implementing a conservation and management plan under section 320, (4) for developing and implementing a management strategy under section 304(n), and (5) implementing a marine combined sewer overflow correction program."

(c) **GRANT ASSISTANCE.**—Section 201(n)(2) of the Federal Water Pollution Control Act is amended—

(1) by inserting "sediment quality, fishery quality and floatable" after the first time the word "quality" is used;

(2) by deleting "subject to lower levels of water quality"; and

(3) by striking the last sentence and inserting in lieu the following: "Such assistance shall be provided only for implementation of marine combined sewer overflow elimination permit approved pursuant to section 402(o) of this Act. The Administrator shall allocate available funds to address the most significant water pollution problems and shall give priority to municipalities discharging into marine areas in need of protection designated pursuant to section 5 of the Comprehensive Ocean Assessment and Strategy Act. The amount of grants to any municipality under this subsection for a fiscal year shall not exceed 50 per centum of the costs of a project and shall be made on the condition that the non-Federal share of such costs are provided from non-Federal sources."

#### SECTION-BY-SECTION ANALYSIS OF THE COMPREHENSIVE OCEAN ASSESSMENT AND STRATEGY (COAST) ACT

Section 1.—Provides that the Title of the bill is the Comprehensive Ocean Assessment and Strategy (COAST) Act of 1989.

Section 2.—Findings.

Section 3.—Establishes a policy of the United States to restore and maintain the integrity of the marine environment so that full uses of its resources are not impaired by pollution.

Section 4.—Defines the terms "Administrator", "degraded" and "degradation", "floatable", "federal agency", "living marine resource", "marine areas in need of protection", "marine combined sewer overflow",

"marine environment", "pollutant" and "Under Secretary".

Section 5.—Requires EPA and NOAA to designate marine areas in need of protection and conduct a continuing assessment of such areas and requires states to develop and implement management strategies so that the area no longer needs additional protection.

Section 6.—Requires EPA to use the national Toxic Release Information to assess the major sources of toxics discharged into the marine environment and areas of primary impact and a strategy for using this information to improve EPA water programs.

Section 7.—Requires EPA to designate pollutant quality criteria for marine waters, sediments and living marine resources and requires states to develop numerical standards to prevent degradation. Violations of numerical standards require EPA and states to establish additional point source controls and revise nonpoint source management programs.

Section 8.—Amends Section 403 of the Clean Water Act to apply the marine discharge criteria to discharges in all marine waters, not just those outside the Territorial Sea. Also requires EPA to revise its criteria to require EPA and the states to consider source reduction opportunities.

Section 9.—Makes nonpoint source control in marine areas in need of protection a priority for nonpoint source grants and requires the Administrator and the Secretary of Agriculture to work together to identify use of the Conservation Reserve Program to protect marine waters from agricultural nonpoint pollution.

Section 10.—Requires the Administrator to eliminate discharges from marine combined sewer overflows (CSOs), requires states to conduct an inventory of marine CSOs, requires marine CSOs to obtain permits and makes failure to obtain a permit or comply with a compliance schedule a violation of the Clean Water Act.

Section 11.—Requires revision of pretreatment programs for any publicly owned treatment plant whose discharge of toxic pollutants contributes to marine degradation.

Section 12.—Requires permits for marine stormwater discharges which contribute to the degradation of the marine environment.

Section 13.—Requires initiation of programs to determine the effect of atmospheric deposition on the marine environment and to monitor floatables, requires the establishment of marine environment monitoring protocols including the use of biological monitoring, and requires the preparation of studies on the impacts on human health and the economy from degraded waters and on the relationship between nutrient over-enrichment and algal blooms.

Section 14.—Establishes a marine pollution clearinghouse.

Section 15.—Requires EPA to report to Congress on Federal agency programs which may contribute to degradation of the marine environment and make recommendations on measures Federal agencies can take to reduce marine degradation. Authorizes each Federal agency, within its existing authority, to take action to reduce marine degradation.

Section 16.—Amends the Ocean Dumping Act to increase criminal penalties for violations of the Act.

Section 17.—Authorizes \$30 million to EPA to carry out the Act, \$40 million to EPA to issue 50 percent matching grants to

states to develop and implement management strategies for marine areas in need of protection, and \$15 million to NOAA. Also makes development and implementation of management strategies for marine areas in need of protection and correction of marine CSOs available for state revolving loan funds under the Clean Water Act and extends the existing marine CSO grant authority.●

By Mr. HOLLINGS (for himself, Mr. GORE, Mr. DANFORTH, Mr. PRESSLER, and Mr. COCHRAN):

S. 1180. A bill to authorize the President to appoint Rear Adm. Richard Harrison Truly to the Office of Administrator of the National Aeronautics and Space Administration; to the Committee on Commerce, Science, and Transportation.

APPOINTMENT OF ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

● Mr. HOLLINGS. Mr. President, on June 7, 1989, the President formally submitted the nomination of Richard H. Truly to be the next Administrator of the National Aeronautics and Space Administration. To assume that post, Admiral Truly requires a waiver of the National Aeronautics and Space Act because of his military status. I am pleased today to introduce legislation that would exempt Adm. Richard H. Truly from the provisions of section 202(a) of the National Aeronautics and Space Act of 1958 and allow him to become the next NASA Administrator. I also am pleased to be joined in this initiative by Senators GORE, DANFORTH, PRESSLER and COCHRAN.

Mr. President, when the Space Act was written, there was a conscious effort to maintain the civilian character of NASA. That effort is highlighted by section 202(a) of the Space Act that requires the Administrator and Deputy Administrator of NASA to be appointed from civilian life.

Mr. President, I endorse that goal and the general philosophy of the original Space Act. NASA should be a civilian agency, and it should be responsible for civil space policy.

However, much has changed since the Space Act was written, and in dealing with change, it is sometimes necessary to make exceptions to the rule.

In the case of Adm. Richard H. Truly, I feel strongly that there is sufficient justification for the Congress to waive section 202(a) of the Space Act. Admiral Truly has served the U.S. Navy with pride and distinction, and he also has served NASA with the same pride and distinction. A review of Admiral Truly's career will indicate that he has given NASA nearly 17 years of service in his 30-year career. Most recently, Admiral Truly served as the Associate Administrator of NASA for the Office of Space Flight, and in that position he was responsible, along with the men and women of NASA and the aerospace/contractor

teams, for returning the space shuttle to flight status. Admiral Truly is an "admiral," but he also is a well qualified member of the NASA team, and section 202(a) should be waived to permit the appointment of Admiral Truly as the Administrator of NASA.

I am pleased to say that I have explored this issue with the distinguished chairmen and ranking members of the House Science, Space, and Technology Committee and the Subcommittee on Space Science and Applications and that there does not appear to be any opposition to this legislative initiative. I am optimistic, therefore, that this measure can be dealt with in a timely manner by both Houses of Congress.

Mr. President, I am sure that most of the Members are aware that since May 15, 1989, Admiral Truly has been serving as the Acting Administrator of NASA. But few are probably aware of the fact that Admiral Truly has initiated his retirement from the Navy because he does not feel it is appropriate for an active duty officer to head up NASA. As of July 1, 1989, Admiral Truly will no longer be an active duty officer.

Mr. President, the legislation I am introducing today is the first exemption of section 202(a) of the Space Act ever considered by the Congress, and it should be seriously considered by the Members. I am hopeful that after the Members have reviewed the proposed language and Admiral Truly's record they will agree with me that section 202(a) of the Space Act should be waived and Admiral Truly should be appointed the next Administrator of NASA.

Mr. President, pursuant to an agreement with the House of Representatives, the bill that I am introducing today will be considered in parallel with Admiral Truly's nomination by the Senate Commerce Committee. Upon passage of the proposed legislation by the Senate, it will be sent to the House for its immediate consideration. The Senate will not act upon the Truly nomination until the proposed legislative exemption is signed into law by the President. At the same time, the committee has personal assurances from Admiral Truly that he will not be sworn in as Administrator of NASA until he has retired from active military duty.

Mr. President, I support this legislation, and I support the nomination of Richard H. Truly to be the next NASA Administrator. I am optimistic the Congress will act upon this measure in an expedited manner and that Admiral Truly and the NASA team can get on with the business at hand—maintaining a safe, reliable space transportation system, implementing a visionary space science program and a mission to planet Earth, and developing a permanently manned space station.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1180

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provisions of section 202(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2472(a)), or any other provision of law, the President, acting by and with the advice and consent of the Senate, is authorized to appoint Rear Admiral Richard Harrison Truly to the Office of Administrator of the National Aeronautics and Space Administration. Admiral Truly's appointment to, acceptance of, and service in that Office shall in no way affect the status, rank, and grade which he holds as an officer on the retired list of the United States Navy, or an emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade, except to the extent that subchapter IV of chapter 55 of title 5, United States Code, affects the amount of retired pay to which he is entitled by law during his service as Administrator. So long as he serves as Administrator, Admiral Truly shall receive the compensation of that Office at the rate which would be applicable if he were not an officer on the retired list of the United States Navy, shall retain the status, rank, and grade which he now holds as an officer on the retired list of the United States Navy, shall retain all emoluments, perquisites, rights, privileges, and benefits incident to or arising out of such status, office, rank, or grade, and shall in addition continue to receive the retired pay to which he is entitled by law, subject to the provisions of subchapter IV of chapter 55 of title 5, United States Code.*

SEC. 2. In the performance of his duties as Administrator of the National Aeronautics and Space Administration, Admiral Truly shall be subject to no supervision, control, restriction, or prohibition (military or otherwise) other than would be operative with respect to him if he were not an officer on the retired list of the United States Navy.

SEC. 3. Nothing in this Act shall be construed as approval by the Congress of any future appointments of military persons to the Offices of Administrator and Deputy Administrator of the National Aeronautics and Space Administration.●

● Mr. GORE. Mr. President, I rise in support of the legislation being introduced by the distinguished chairman of the Senate Commerce Committee and am pleased to be an original cosponsor of this waiver for Adm. Richard H. Truly.

During the course of the last few years, NASA and the space shuttle program have had to survive some stormy seas, and Adm. Richard Truly played a major role in helping the agency weather these storms. Now, Admiral Truly has been nominated to be the next Administrator of NASA, and I intend to support that nomination.

Mr. President, this Nation needs a strong civil space program, a program that is dedicated to peaceful purposes

for the benefit of all mankind. I support such a program, and I see NASA as the linchpin of such a program. Since the Space Act was passed in 1958, we have tried to protect the character of NASA and the civil space program by requiring that the Administrator and the Deputy Administrator of NASA be appointed from civilian life. Over the course of the years, several other agencies that had similar requirements have modified those requirements or have come to waive these requirements on a regular basis. NASA has been different. Until the nomination of Admiral Richard H. Truly, there has never been an effort to waive section 202(a) of the Space Act, as amended, to permit an active duty or retired military officer to assume the posts of Administrator or Deputy Administrator of NASA. Such an action, therefore, requires careful consideration.

Mr. President, I have given considerable thought to this matter and to the nature of NASA and the civil space program for quite some time. Actually, this issue first came to my attention in the aftermath of the *Challenger* accident when NASA went out to Admiral Truly and General McCartney to help return the space shuttle to flight status. One has but to look at the role of these individuals and other military personnel in NASA and the aerospace community to understand the benefits that NASA has accrued from dedicated military personnel. The history of NASA and the civil space program is replete with dedicated military personnel and civil servants working together on space activities devoted to peaceful purposes for the benefit of all mankind. So is the history of America. From Washington, to Marshall, to Eisenhower, the Nation's military personnel have served in civilian capacities with distinction. And I believe Admiral Truly will do the same.

Mr. President, having reviewed this issue very closely, I am convinced that the approval of Richard H. Truly as Administrator of NASA will not change the character of NASA or of the civil space program—NASA will still be a civil agency dedicated to space activities that benefit all mankind. More importantly, I believe that the approval of the nomination of Richard H. Truly will give NASA an Administrator who has invaluable experience and who has learned lessons this Nation and its space program can never afford to forget.

Mr. President, this waiver would be an exception to the rule, but it also would ensure that NASA is placed in the hands of a well-qualified and able Administrator. Based on what the space program and NASA have gone through, I think we owe them such an Administrator, and I intend to get this legislation approved in as timely a manner as possible.●

By Mr. HEINZ (for himself and Mr. WIRTH):

S. 1181. A bill to amend the Solid Waste Disposal Act to require producers and importers of lubricating oil to recycle a percentage of used oil each year, to require the Administrator of the Environmental Protection Agency to establish a recycling credit system for carrying out such recycling requirements, to establish a management and tracking system for such oil, and for other purposes; to the Committee on Environment and Public Works.

#### CONSUMER PRODUCTS RECOVERY ACT

● Mr. HEINZ. Mr. President, Senator WIRTH, Congressman TORRES, Congresswoman SCHNEIDER, and I—among others—are introducing legislation to encourage recycling of motor oil as a test case for recycling hazardous waste in general. Every year 400 million gallons of used motor oil—the equivalent of 35 times the catastrophic amount of oil spilled in Prince William Sound—is poured down storm drains or discarded in landfills. Most of that ends up in our surface or ground water. The great tragedy is that motor oil is completely recyclable. Yet only 30 percent is every recycled.

Recyclers often charge gasoline stations just to remove the oil. No wonder they don't want to recycle it. Our legislation provides a market for recycled oil. Manufacturers will be required to recycle a minimum amount of oil as a percentage of their overall production. The minimum will be set by EPA beginning at current recycling levels and increasing by 2 percentage points a year thereafter.

Most manufacturers do not recycle their own oil. They do, however, buy recycled oil from firms that specialize in that business. Our legislation grants recyclers credits for the amount of oil they recycle, which is then marketed and sold to manufacturers. Manufacturers can purchase credits from the recyclers in order to meet the requirements of our bill if they choose not to recycle, or they can contract for recycling themselves. We believe this will create a vigorous and competitive market for recycling. Without such a market for recycling, I see no realistic prospect that we will ever see recycling compete with landfilling and dumping. Without the kind of action we propose, we will continue to create—and leave to our children to clean up—the equivalent of 40 Valdez oil spills each and every year. This bill will get motor oil out of our water and back into our cars.

The amount of solid and hazardous wastes generated by every man, woman, and child in the United States has increased by 80 percent since 1969. Each of us throws away 3.6 pounds of garbage every day—enough annually to fill a convoy of 10-ton trucks 145,000 miles long, more than 7 times

the circumference of the planet. Our legislation takes a first step toward reducing this tremendous waste stream. If successful, EPA is authorized to proceed with a similar recycling program for used tires, lead acid batteries, newsprint, volatile organic compounds, and used pesticide containers.

The legislation is based on Senator WIRTH's and my report, Project 88, which recommends market incentives for environmental clean up. President Bush has credited Project 88 with bringing creative solutions to long-standing problems in the Clean Air Act. Today, we move ahead to solid and hazardous waste as we move ahead on Project 88.

Mr. President, I ask unanimous consent that the text of the bill appear in the *RECORD* at this point, along with chapter 7 of Project 88.

There being no objection, the material was ordered to be printed in the *RECORD*, as follows:

S. 1181

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE

This Act may be cited as the "Consumer Products Recovery Act of 1989".

#### SEC. 2. FINDINGS.

The Congress find the following:

(1) The generation of solid and hazardous waste has grown to alarming proportions in the United States, with per capita disposal having increased by 80 percent from 1960 to 1989.

(2) Market-based incentives targeted at waste reduction and recycling together with Federal regulation can significantly reduce both the amount and the toxicity of hazardous and solid wastes entering the environment.

(3) Each year Americans improperly dispose of 400 million gallons of used motor oil, an amount greater than 35 Exxon Valdez oil spills. In order to protect the environment and reduce dependence on imported fuels, there is a great need to recycle used oils.

(4) The Administrator of the Environmental Protection Agency requires additional statutory authority to address waste reduction and, in particular, to apply market-based incentives to recycling and reduction of hazardous and solid wastes.

#### SEC. 3. REQUIREMENTS FOR RECYCLE USED OIL AND OTHER COMMODITIES.

(a) IN GENERAL.—Subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) is amended by redesignating sections 3015 through 3020 as sections 3017 through 3022, respectively, and by inserting after section 3014 the following new sections:

"SEC. 3015. USED OIL: RECYCLING REQUIREMENTS.

"(a) GENERAL REQUIREMENT.—(1) Beginning not later than 18 months after the date of the enactment of the Consumer Products Recovery Act of 1989, a producer or importer of lubricating oil each year shall recycle, using a method described in paragraph (2), an amount of used oil equal to at least that amount of oil determined by—

"(A) multiplying the lubricating oil produced or imported that year by such person, by

"(B) the recycling percentage established by the Administrator under subsection (b).

"(2) A producer or importer of lubricating oil may comply with this subsection—

"(A) by recycling (through re-refining) used oil (in compliance with the requirements of section 3014 and regulations promulgated pursuant to such section), for purposes of producing lubricating oil;

"(B) by purchasing re-refined oil for purposes of producing lubricating oil; or

"(C) by purchasing recycling credits under the recycling credit system established pursuant to subsection (c).

"(b) **RECYCLING PERCENTAGE.**—The Administrator each year shall establish a recycling percentage for use under subsection (a). The percentage applicable during the first year that the requirement established by subsection (a) is in effect shall be a percentage that is 2 percentage points higher than the recycling rate for lubricating oil that exists on the date of the enactment of this section. Such recycling rate shall be determined by using data for 1988 or the most recent year for which data are available. Each year thereafter, until 1999, the recycling percentage shall be an additional 2 percentage points higher than the percentage of the previous year.

"(c) **CREDIT SYSTEM FOR RECYCLING USED OIL.**—(1) Not later than 18 months after the date of the enactment of the Consumer Products Recovery Act of 1989, the Administrator shall promulgate regulations to establish a system under which (A) recyclers may create credits for used oil recycling, and (B) producers or importers of lubricating oil may purchase such recycling credits from such recyclers, for purpose of complying with subsection (a). No person may create such credits, and no producer or importer of lubricating oil may purchase such credits, except in accordance with this subsection and the regulations promulgated under this subsection.

"(2) At the minimum, the regulations under paragraph (1) shall include the following requirements:

"(A) The owner or operator of any place of collection of used oil, such as a service station or commercial entity that collects used oil from individuals or others, shall keep receipts issued by any transporters who take delivery of the used oil. The receipts shall be kept for at least two years and shall show the date, the amount of used oil taken, and the transporter's identification number. The owner or operator shall show such receipts to the Administrator or to any State enforcing this Act upon demand. In the case of any used oil taken by a transporter for the purpose of delivery to a recycling facility, the owner or operator shall keep on file a copy of a contract or written agreement between the owner or operator and the transporter to the effect that the transporter agrees to take the used oil to a recycling facility. The Administrator also may require such owners and operators to obtain identification numbers issued by the Administrator for purposes of implementing this section and section 3014.

"(B) The owner or operator of any place of collection of used oil also shall certify to the Administrator that any used oil taken by a transporter is not contaminated or adulterated with hazardous wastes or substances above de minimus levels (as determined by the Administrator under the regulations promulgated to implement the section). For purposes of such certification, an owner or operator may presume that a small quantity of used oil is not contaminated or adulterated if it—

"(i) has been removed from the engine of a light duty motor vehicle or household appliances by the owner or such vehicle or appliances, and

"(ii) is presented, by such owner, to the owner or operator for collection, accumulation, and delivery to an oil recycling facility.

"(C) Any person who transports used oil to a recycler, by truck or other means, shall obtain an identification number from the Administrator. Such transporters shall issue receipts (as described in subparagraph (A)) to the owners or operators of used oil collection places and shall keep records showing each collection place from which used oil was taken, the amount of used oil taken from each such place, and the date. Upon delivery of used oil by the transporter to a recycling facility, the transporter shall give the recycler a copy of the records covering the delivered oil.

"(D) The owner or operator of a used oil recycling facility with a permit under section 3005(c) or under section 3014 of this Act (in this section referred to as a 'recycler') shall be the only person who may create a recycling credit for the recycling credit system.

"(E) The recycler shall certify to the Administrator that the substance being recycled for purposes of creating recycling credits is used oil and that the used oil has not been contaminated or adulterated with hazardous wastes or substances above de minimus levels (as determined by the Administrator under the regulations promulgated to implement this section). To support such certification, the recycler shall test the used oil, upon receipt from transporters, for such wastes and substances as the Administrator determines appropriate under the regulations.

"(F) Any used oil proposed to be recycled for the purpose of creating recycling credits shall come from an owner or operator of a used oil collection place, or a transporter with an identification number, with whom the recycler has entered into a contract or agreement for such purpose.

"(G) The records that a recycler must keep are at least the following:

"(i) The oil delivery records given by transporters of used oil (as described in subparagraph (B)). Such records shall be kept for at least one year.

"(ii) The results of the oil tests conducted by the recycler when the oil is received (as described in subparagraph (E)).

"(iii) A record of the quantities of used oil received for recycling.

"(iv) A record of the quantities of recycled oil sold or otherwise distributed in commerce, and the destinations of such recycled oil. Part of such record shall be a record of the quantities of refined oil sold to producers or importers of lubricating oil for the purpose of complying with subsection (a).

"(v) A record of the sale of recycling credits, including the name and address of the producers and importers the credits were sold to and the amount of credits sold.

"(H) The recycler shall sell or otherwise distribute in commerce the recycled oil as specification used oil, off-specification used oil, hazardous waste fuel, or refined oil (as defined by the Administrator).

"(I) Each year a producer or importer of lubricating oil shall keep records of the quantity of lubricating oil produced or imported, the amount of recycling credits purchased (including the names of recyclers from whom the credits were purchased and the dates of the purchases), and the amount (if any) of recycling credits sold or carried over from previous years.

"(3) The Administrator may include such other requirements in the regulations under paragraph (1) with respect to qualifications for recyclers, importers, and producers; methods for auditing compliance with the system; and enforcement of the system; as the Administrator considers necessary or appropriate for administering the recycling credit system established under this subsection.

"(4) The regulations under paragraph (1) shall take into account the relative competitive positions of used oil reproducers and used oil re-refiners under the system and shall include provisions to ensure, to the extent practicable, that neither would be at a competitive advantage under the system. Any such provisions shall, at a minimum, allow for used oil re-refiners to exclude between 15 and 25 percent of their production of re-refined oil from the recycling requirement under subsection (a).

"(5) For purposes of this section, the term 'recycling credit' means a legal record of a recycling activity undertaken in accordance with this subsection that represents an amount of used oil recycled for purposes of complying with subsection (a).

"(d) **REPORTS.**—(1) Not later than six years after the date of the enactment of the Consumer Products Recovery Act of 1989, the Administrator shall submit to Congress an interim report on the implementation of this section. The report shall include, at a minimum—

"(A) a discussion of the effects of the requirements of this section on the oil industry and on the environment; and

"(B) an evaluation of the level of the recycling percentage under subsection (b) and recommendations on whether, and at what rate, the percentage should be increased in future years.

"(2) Not later than 10 years after such date, the Administrator shall submit to Congress a final report on the implementation of this section. The report shall include an updated version of the discussion and evaluation required in the interim report, as well as such other findings and recommendations with respect to the implementation of this section as the Administrator considers appropriate.

"(e) **APPLICABILITY.**—This section applies to any person who produces or imports more than 100,000 gallons of lubricating oil a year.

"(f) **REGULATIONS.**—The Administrator shall promulgate regulations to implement this section not later than 18 months after the date of the enactment of the Consumer Products Recovery Act of 1989. If the Administrator fails to promulgate such regulations by that date, the recycling percentage under subsection (b) shall be 40 percent until such time as the regulations are promulgated.

"SEC. 3016. RECYCLING REQUIREMENTS FOR CERTAIN COMMODITIES.

"(a) **PLAN.**—Not later than two years after the date of the enactment of the Consumer Products Recovery Act of 1989, the Administrator shall submit to Congress a plan, based on the experience with the implementation of section 3015, for the recycling of the commodities listed in subsection (b) and such other commodities as the Administrator considers appropriate. With respect to each commodity, the plan shall discuss the desirability and feasibility, in terms of environmental impacts resulting from reducing volume, reduced toxicity, and economic impacts, of requiring the recycling of the com-

modity, and the specific manner in which such recycling could be accomplished if the Administrator concludes that such recycling is feasible. The plan also shall include an incentive-based method or methods for accomplishing the recycling, such as a credit system (as established under section 3015(c)) or a system under which deposits on the commodity are made and refunds given upon return of the commodity for recycling (known as a deposit-refund system).

"(b) **COMMODITIES COVERED.**—The commodities that shall be included in the plan are the following:

- "(1) Newspapers with daily circulation.
- "(2) Used tires.
- "(3) Used lead acid batteries.
- "(4) Used pesticide containers.
- "(5) Antifreeze.
- "(6) The volatile organic compounds known as perchlorethylene, methylene chloride, trichlorethylene, and methyl chloride, and such other volatile organic compounds (including certain chlorofluorocarbons) as the Administrator determines should be included.

"(c) **IMPLEMENTATION.**—Not later than one year after the plan is submitted under subsection (a), the Administrator shall begin to implement the plan with respect to one commodity included in the plan. Each year thereafter, the Administrator shall begin to implement the plan with respect to an additional commodity. The Administrator shall select the commodities in the order of priority determined by the Administrator under the plan. For purposes of implementing a plan for a commodity under this section, the Administrator is authorized—

"(1) to carry out any of the methods for accomplishing the recycling of the commodity that are included in the plan (including a deposit-refund system); and

"(2) to administer the plan under this subtitle or under subtitle D of this Act, as the Administrator determines appropriate."

(b) **TECHNICAL AMENDMENT.**—The table of contents for subtitle C of such Act (contained in section 1001 of such Act) is amended—

(1) by redesignating the items relating to sections 3015 through 3020 as sections 3017 through 3022; and

(2) by inserting after the item relating to section 3014 the following new items:

"Sec. 3015. Used oil: recycling requirements.  
"Sec. 3016. Recycling requirements for certain commodities."

#### SEC. 4. OTHER REQUIREMENTS FOR USED OIL MANAGEMENT.

(a) **IN GENERAL.**—Section 3014 of the Solid Waste Disposal Act (42 U.S.C. 6921) is amended to read as follows:

"SEC. 3014. USED OIL: PERFORMANCE STANDARDS AND OTHER REQUIREMENTS.

"(a) **IN GENERAL.**—Not later than 18 months after the date of the enactment of the Consumer Products Recovery Act of 1989, the Administrator shall promulgate regulations establishing such performance standards and other requirements for used oil, including (but not limited to) generators, transporters, and recyclers of used oil, as may be necessary to protect public health and the environment from hazards associated with used oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of any such regulations on the oil recycling industry. The Administrator shall ensure that such regulations (such as regulations on the burning of used oil) are protective but do not discourage the environmentally acceptable recovery or recycling of used oil.

"(b) **TREATMENT OF OFF-SPECIFICATION AND SPECIFICATION FUEL.**—If used oil is listed or identified as a hazardous waste under section 3001, any off-specification fuel and any specification fuel (as defined by the Administrator) derived from used oil shall not be considered to be listed or identified as, or derived from, a hazardous waste under that section after being reprocessed or re-refined at a facility which has a permit under section 3005(c) or for which a valid permit is deemed to be in effect under subsection (c).

"(c) **PERMITS.**—The owner or operator of a facility which recycles used lubricating oil shall be deemed to have a permit under this subsection for all treatment or recycling (and any associated tank or container storage) if such owner or operator complies with standards promulgated by the Administrator under this section. The Administrator may require any such owner or operator to obtain an individual permit under section 3005(c) if he determines that an individual permit is necessary to achieve the purposes of this section.

"(d) **LABELING REQUIREMENTS.**—(1) Any person who packages lubricating oil for sale or other distribution in commerce, including producers and importers of lubricating oil, shall label each package (such as a can) with the following statements, or with words to the same effect: 'Used oil is a hazardous substance. Do not dispose of used oil in garbage, sewers, or on the ground. To find out how to properly recycle used oil in your area, call 800—

"(2) The Administrator shall promulgate regulations requiring States to develop and submit a plan for making information available to the public about used oil recycling. The Administrator shall establish a nationwide toll-free telephone line through which the Environmental Protection Agency shall give out information to callers about State used oil recycling programs."

(b) **TECHNICAL AMENDMENT.**—The table of contents of such Act (contained in section 1001 of such Act) is amended by striking out the item relating to section 3014 and inserting in lieu thereof the following:

"Sec. 3014. Used oil: performance standards and other requirements."

#### SEC. 5. REGULATION REQUIREMENT IF EPA FAILS TO MEET DEADLINE.

If the Administrator fails to promulgate regulations under section 3014 of the Solid Waste Disposal Act (as amended by section 4) and under section 3015 of such Act (as added by section 3) within 18 months after the date of the enactment of this Act, then the regulations on used oil management standards proposed in the Federal Register on November 29, 1985, as part of the entry titled "Hazardous Waste Management System: Final and Proposed Rules" shall become interim final regulations. Such interim final regulations shall remain in effect for purposes of implementing this section until such time as the Administrator promulgates the regulations under such sections 3014 and 3015.

#### SEC. 6. AUTHORIZATION.

There is authorized to be appropriated to the Administrator of the Environmental Protection Agency \$1,200,000 to carry out sections 3014, 3015, and 3016 of the Solid Waste Disposal Act (as added or amended by sections 3 and 4). Such funds shall be used to hire the equivalent of at least six additional full-time employees to carry out such sections. Such funds shall remain available until expended.

#### CHAPTER 7—SOLID AND HAZARDOUS WASTE MANAGEMENT

It is becoming increasingly clear that we must begin to face up to the serious problems caused by the massive quantities of solid and hazardous waste which our society generates. The New York City Health Commissioner, Dr. Stephen C. Joseph, recently commented: "I do believe this period of the 1980s will be remembered at the time the planet struck back. The planet is telling us we can't treat it this way anymore."<sup>1</sup>

Waste management is not a single policy problem, but a convenience label for a broad range of environmental threats. Included are conventional dilemmas such as how municipalities should deal with the tremendous quantities of solid waste which they generate, and a newer set of problems associated with the management of hazardous wastes, a topic which has gained increasing attention from all levels of government during the past ten to fifteen years.

We begin this chapter with a look at the conventional problem of solid waste management, and we endorse recycling, a somewhat unconventional approach, as one part of a community's portfolio of solutions. We recommend various means of ensuring that individual communities choose least-cost approaches to solid waste management. In the second part of the chapter, we begin our examination of hazardous waste problems, with proposals for reducing sources of toxic chemicals in the environment. We recommend methods for providing market-type signals to producers and consumers of products and services which are associated with toxic waste generation. We also recommend consideration of limited product and process labelling, which if properly done can have the effect of reducing both the supply and the demand for products and services which expose persons to hazardous substances. Finally, turning to the more specific problem of containerizable hazardous wastes, we recommend the development of a deposit-refund system to provide incentives both for the safe disposal of toxic substances and for the substitution in production of safer chemical agents.

#### SOLID WASTE MANAGEMENT

Until only recently, most of us gave little, if any, thought to what happened to our household refuse once it was picked up and hauled away. But in many parts of the country, garbage has been cropping up in the news: old landfills are filling up and contaminating water supplies; it is increasingly difficult to find sites for new landfills; giant garbage incinerators are bringing with them equally giant bond issues representing burdensome investments for many communities; and now it is becoming clear that incinerators produce their own set of significant environmental hazards.

#### The Problem and Current Policies

It is not an overstatement to say that a garbage crisis faces many municipalities. Los Angeles County landfills are expected to be full by 1994; New York City's landfill space will be totally exhausted by the 2002; and Connecticut will run out of currently available landfill space within two or three years. At the same time, the environmental hazards of landfills are receiving increased recognition, and standards for new and existing landfills are being tightened. This crisis affects almost every part of the country.<sup>2</sup>

<sup>1</sup> Footnote at end of article.

One relatively new approach previously seemed to offer a quick solution. Garbage incineration, its proponents proclaimed, could use updated technology to burn garbage without unsafe air emissions, profitably producing useful electric energy, and leaving only an "inert" ash which would greatly reduce landfill requirements. The initial projects of this so-called "resource recovery" industry were seen to be attractive for a number of reasons: electricity prices were high and projected to go higher; Federal tax "preferences" encouraged incineration (with both Federally subsidized tax-exempt public financing and investment tax credits to private-industry proponents); and "turnkey operations" were promised in which industry sponsors would do all the work, obtaining the necessary permits and financing, while municipalities would just deliver their garbage.

Success in such turnkey operations has been elusive. Operators have not been able to offer performance guarantees in the face of falling electricity prices; tax reform legislation has restricted Federal subsidies; and significant environmental risks associated with incinerator air emissions and hazardous ash residues have required expensive "fixes." Although air pollution caused by dioxin has been the most widely publicized environmental hazard of incineration, the existence of toxic heavy metals in incinerator ash as well as in air emissions may be of even greater long-run concern. Because of the presence of toxic metals in ash, the residue from incinerators routinely tests as a "hazardous waste" according to EPA standards. Nevertheless, the vast majority of ash is disposed of in ordinary municipal landfills; and large quantities of incinerator ash are managed by even less safe means, including open disposal, use as landfill cover, and use as de-icing grit on winter roads.

Due to increasing environmental and economic risks, more than \$3 billion in projects have been canceled since the beginning of 1987.<sup>3</sup> Thus, while the traditional approach to disposing of garbage—landfilling—has reached its limits, a promised wholesale solution—incineration—has turned out to be problematic, at best.<sup>4</sup> As a result, communities across the country have pushed forward an alternative supplementary approach, one that much of the solid waste management industry previously did not take very seriously.<sup>5</sup>

#### *Recommendation 34: Policies Which Allow Recycling to Compete in the Market*

Recycling, as one element in managing solid waste, is being discovered (rather independently) by numerous communities which have found conventional waste management methods insufficient. In choosing to participate in recycling programs, people respond to publicity, convenience, and economic incentives just as they do for other activities. Thus, successful recycling is not so much a question of individual initiative as it is a matter of providing adequate recycling institutions. The vast majority of our garbage is recyclable. The largest components of municipal solid waste consist of various forms of paper and yard wastes. Newspaper, cardboard, and office paper are all recyclable; several communities have even recycled mixed papers (including magazines, cereal boxes, junk mail, and so forth). Yard wastes (grass clippings and tree trimmings) can be composited to enrich soil, and various forms of plastics can now be recycled. Moreover, a variety of methods, in addition to curbside collection, are available. Apartment house collection programs, buyback centers, office

paper recycling, yard waste collection, and others can deal effectively with significant portions of the waste stream.<sup>6</sup> Studies show that in Seattle and New York City combinations of such recycling efforts would foster even higher levels of participation.<sup>7</sup>

The critical question which communities face is whether recycling makes sense economically. The answer is frequently that recycling's most important economic benefits are from reducing the quantity of garbage which must otherwise be collected and disposed, not from revenues due to sales of recycled materials. When all economic benefits are counted together, recycling can indeed pay for itself. Furthermore, in many situations recycling may be the least-cost waste management alternative. A survey of California curbside recycling programs found that "in terms of cost per ton of waste recycled or landfilled, curbside recycling compares favorably with refuse collection and disposal."<sup>8</sup> Seattle's study of alternatives found large-scale recycling to be cheaper than incineration or greater reliance on landfilling; and an analysis of a first-phase recycling program in New York City estimated average costs of recycling to be \$18 per ton, compared with \$37 per ton for an incinerator with equivalent capacity.<sup>9</sup>

Can markets be expected to absorb recycled materials? If not, there are many steps which the Federal, state, and local governments can take to help develop such markets. For particular products, waste-end taxes or deposit-refund systems may be highly effective and economically efficient.<sup>10</sup> More generally, it would be desirable to stop financing garbage collection through property taxes and user fees which do not reflect quantities of trash picked up daily. While the administrative problems of alternative financing mechanisms will not be trivial, economically rational alternatives merit consideration. Among these are: "product-disposal charges" levied on bulk producers or importers of packaging materials; and "recycling-incentive taxes" to create price differentials which reflect differences among containers in the disposal problems they cause.<sup>11</sup>

To take full advantage of the efficiency and flexibility of markets, recycling efforts may be better off in the hands of private business than local governments. In fact, recycling is attracting the attention of the waste management industry. Resource Recovery Systems of Groton, Connecticut has designed recycling processing facilities in New Jersey and Massachusetts. The disposal firm which serves the city of San Francisco will soon handle both curbside collection of recyclables and processing of collected materials. Chemical Waste Management, Inc., the industry's largest company, runs the curbside recycling program in San Jose and is involved with Seattle, Washington in its highly successful program.<sup>12</sup>

If communities are to adopt truly least-cost solutions to their solid waste management needs, it is absolutely essential that recycling be considered on an equal basis with other alternatives. We therefore recommend that the bidding process for municipal waste management be opened to all techniques, and that recycling options be provided with guarantees of minimum supplies similar to those already offered to incineration and landfill operators. Instead of attempting to force technology by requesting bids for a "2,000 ton-per-day incineration facility" (or a "2,000 ton/day recycling program," for that matter), municipal requests for bids should state overall needs

without specifying processing techniques. In order to get to the point where municipal decision makers routinely evaluate recycling as a waste management option, a great deal more information about recycling than is currently available will need to be systematically disseminated. Data on existing recycling programs should be collected, and cost analyses of these programs performed and disseminated, presumably through research and education by EPA and relevant state agencies.

Finally, institutional barriers must be addressed. Much attention and effort by municipalities will be required for successful recycling, just as for other waste management alternatives. Municipalities certainly know the efforts required to obtain permits for landfills or incinerators. Analogous efforts should be expected for recycling alternatives. In fact, the work needed to prepare and promote a successful large-scale recycling program may be less, yet more rewarding than efforts currently required for less attractive options.

#### **REDUCING SOURCES OF TOXIC SUBSTANCES IN THE ENVIRONMENT**

Before examining alternative approaches to managing hazardous wastes, it is imperative to ask whether and how the generation of such hazardous wastes can be reduced. As public concern regarding hazardous waste problems has increased and regulations have been tightened, the costs of managing existing stocks of hazardous wastes have increased dramatically. In this context, the notion of reducing the flow of toxic wastes from production processes is becoming more attractive. Policies which reduce toxic wastes will lessen the seemingly intractable problems of managing hazardous waste.

What, then, are the sources of toxic substances regularly released into the environment? They are both numerous and diverse: every day each of us uses a variety of products and services which generate hazardous wastes. The good news is that alternative means exist of providing many products and services, with resultant decreases in releases of toxic residuals to the environment. Source reduction includes: (1) product or service substitution which results in lower toxic residual levels; (2) recycling; (3) changes in process technology and equipment; (4) better plant operations; (5) changes in process inputs; and (6) modifications of end products, such as redesigned packaging.

#### *The Problem and Current Federal Policy*

Total toxic waste discharges may range from one to three billion metric tons annually.<sup>13</sup> Because of the volume and diversity involved, essentially all Americans are exposed every day to toxic residuals, to some degree. Consequently, any policies which affect toxic releases could substantially reduce human exposure to toxic substances.

The present approach is dominated by "command and control" regulations, which typically tell businesses what they need to do to obtain permits or to make regulated discharges. Although the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act (RCRA) encourage source reduction, the actual focus of regulatory activity has been on controlling pollution at the "end of the pipe," with no attention to reducing the flow through it. Toxic wastes are released into the environment as gases, liquids, sludges, and solids, but not necessarily along pathways which individual statutes or regulations address. Environmental regulations with single media foci,

such as the Clean Air and Clean Water Acts, often do no more than transfer toxics among media, rather than reduce their volume: wastewater treatment facilities and some air pollution control devices produce sludges which may be considered hazardous under RCRA. Likewise, surface impoundments of toxic substances regulated under RCRA may produce air emissions—volatile organic compounds—a target of the Clean Air Act. Therefore, Federal toxics policy should shift from concentrating on the carriers of pollution to cutting the output.

Although source reduction has historically not been a high priority for environmental and plant managers, many industrial firms are beginning to develop source reduction programs. Increased treatment and disposal costs, recognition of long-term liability costs for disposal, and the necessity of maintaining corporate goodwill are encouraging heightened waste minimization efforts by these firms. Two important questions arise. First, how can these incentives be harnessed more effectively, giving plant managers, the techniques to measure secondary benefits from waste management projects and practices, such as disposal costs and Superfund liability avoided? Second, why are some firms not following their fellows' lead and establishing serious source reduction efforts?

The following factors affect firms' decisions regarding toxic substance releases: (1) availability and relative costs of land disposal; (2) capital and other costs of implementing source reduction; (3) attitudes toward changes in production processes; (4) availability of information about source reduction technologies; (5) regulatory issues related to modifying waste generation operations, and (6) need for further research and development of applicable techniques. The approaches we propose in the following section seek to address these factors and thus to open more room for business decisions which are likely to result in source reduction.

#### *Recommendations 35: Incentives for Source Reduction*

The current approach to managing hazardous wastes in the environment may not give sufficient attention to reducing the generation of toxic substances. To finance the cleanup of hazardous waste sites, for example, the Superfund program imposes a "front-end" tax on the chemical and petroleum industries, unrelated to the toxicity of products or services. This tax provides no incentive to firms to switch to less toxic substances or to recycle wastes. A "waste-end" tax could induce industries to reduce the toxicity of their products and processes and could also provide an incentive to consumers to substitute safer, lower-cost products. But, waste-end taxes are at present difficult, if not impossible to enforce, because of the incentive they provide for illegal dumping.<sup>14</sup> A deposit-refund system is a more appropriate solution, as we discuss later in the context of containerizable hazardous wastes.

Another approach to providing incentives for toxic source reduction is through labeling requirements, which compel producers to inform consumers regarding the presence in products of known toxic substances which may present significant risks. Such an approach was recently initiated in California for carcinogens and reproductive toxins as one element of its so-called Proposition 65, the Safe Drinking Water and Toxic Enforcement Act.<sup>15</sup> Appropriate labeling has the potential to: (1) reduce unknown, involuntary exposures to hazard-

ous substances; (2) raise public awareness of the presence of toxics and thereby reduce consumer demand for especially toxic products; and (3) encourage producers to substitute safer substances for more toxic ones in their products and services. The California law is one of the first and most comprehensive attempts at labeling consumer products with a warning that production, consumption, or use results in exposure to toxic substances. After we have been able to evaluate California's experience, a similar approach at the national level may merit consideration. It is important, however, that this approach be used only in limited cases, because excessive labeling may simply cause people to ignore signs or labels which warn of genuine risks.

There is an immediate role for the Federal government to play in terms of providing information to industries and firms regarding alternative methods of toxic waste source reduction. Additionally, the government can lead the way in source reduction through its own example of what businesses can do to achieve toxic emission reductions.

#### MANAGEMENT OF CONTAINERIZED WASTE

Hazardous waste management is a convenient label for a range of problems, some of which resemble more familiar stationary-source air and water pollution control or solid-waste management problems, and others which are of quite special character. Among the most difficult of these "special problems" is that posed by wastes generated in small enough quantities that they can be containerized, stored, shipped away from the place of generation, and dumped more or less anywhere in the environment.

#### *The Problem and Current Policy*

According to the Congressional Budget Office, about 30% or 80 million metric tons of 1983 industrial hazardous wastes were found in waste types which may be generated in small enough quantities per unit to be containerized.<sup>16</sup> Of that amount, almost half are in waste types such as solvents and oils which are potentially recyclable after a reclamation or re-refining process.<sup>17</sup> Containerizable wastes are hard to manage because it is particularly difficult to keep track of them. If an industrial plant uses a metal degreasing solvent in its production process, for example, checking for "emissions" to the environment of the spent solvent requires checking all shipments out of the plant gates. For even one plant, there may be tens of thousands of "sources," many of them very small but collectively important.

What this means for management policy is that when regulations make identifiable and measurable emissions more costly, illegal (often dispersed) emissions become more attractive. To some degree, our current policies do indeed consist of raising the cost of approved disposal, relative to illegal disposal. We lack an effective mechanism to monitor actual disposal activities and enforce approved ones. We approve methods of and sites for waste disposal (narrowing the choices toward reliance on high-temperature incineration), and we try to enforce requirements via a manifest system designed to track hazardous wastes once they leave their place of generation. But high temperature incineration is more expensive than dumping waste in the woods, and the manifest system does not seem to perform as intended.<sup>18</sup> A waste-end tax would only exacerbate the incentive problem which already exists.

#### *Recommendation 36: A Deposit-Refund System for Containerizable Hazardous Wastes*

The policy problem for containerizable hazardous wastes may be summarized by the following questions: Can we reduce the quantity of such wastes by enough that disposal of the remainder will hardly matter? Or can we make approved waste disposal as or more attractive than illegal disposal?

Since an emissions or waste-end tax unfortunately provides an incentive for illegal dumping, one answer might come from a special front-end tax on waste precursors such as fresh solvent. Such a tax should amount to a percentage of the price paid rather than a dollar-per-unit figure so that it would work as a general incentive to reduce use and hence waste generation, and would give users an incentive to find safer substitute chemicals. This tax would have the further advantage of creating an incentive to recover and recycle taxed compounds rather than allow them to evaporate or otherwise be dissipated. Once waste is generated, however, incentives that affect the choice of disposal methods would look as they do now.

To resolve this apparent policy dilemma, we propose a front-end tax—a deposit, in effect, with a refund payable when quantities of the substance in question are turned in to the desired facility (for recycling or disposal).<sup>19</sup> This refund provides an incentive to recapture would-be evaporative losses and to follow rules for proper disposal. To the extent that some losses cannot be avoided, there will be an incentive to reduce overall use as well. A deposit-refund system so tailored that proper disposal is made more attractive than illegal disposal changes the monitoring and enforcement problem that responsible agencies now face. It would be their problem to make sure that what is turned in for the refund is, in fact, the substance in question and not a counterfeit. The evidence that the returned material is genuine, however, can be required of the source, a shift in the burden of proof which also acts to lower the agency's cost of achieving the same level of compliance.

Thus, the appeal of a properly scaled deposits-refund system for certain containerizable hazardous wastes is threefold. First, the agency's monitoring problem is no longer the nearly impossible one of preventing illegal dumping of small quantities at dispersed sites in the environment. Rather, the agency simply has to assure itself that what is being returned for refund is what it purports to be; generators will have the incentive to seek the refund rather than following a "midnight-dumping" strategy. Second, there will also exist an incentive to recapture would-be losses from the production process. In the case of solvents, this generalized incentive will spur work to recapture a major part of the ozone precursors now entering the atmosphere. Third and finally, because of some inevitable net losses in processes and because of the costs associated with having to think hard about how the substances involved are used, there will be some incentive to look for nonhazardous substitutes—that is, substances to which the tax-refund system does not apply.<sup>20</sup>

#### FOOTNOTES

<sup>1</sup> Quoted in: Shabecoff, Philip. "Why N.Y. and N.J. Are Still Dumping Sludge Into the Sea." *New York Times*, July 17, 1988, p. 8.

<sup>2</sup>California Assembly Office of Research. *Integrated Waste Management: Putting a Lid on Garbage Overload*. Sacramento, April 1988.

<sup>3</sup>"Energy From Garbage Loses Some of Promise As Wave of the Future." *Wall Street Journal*, June 16, 1988, p. 1.

<sup>4</sup>We do not suggest that there should be no role whatsoever for incineration. But, at the very least, further research is needed to resolve technical problems, and adequate standards for air emissions and ash disposal must be met.

<sup>5</sup>Anderson, David C. "For Lack of Options, New York Gets Serious About Recycling." *New York Times*, May 15, 1988, p. 6.

<sup>6</sup>Environmental Defense Fund. *Coming Full Circle: Successful Recycling Today*. New York, New York, 1988.

<sup>7</sup>Seattle Engineering Department Solid Waste Utility. *Waste Reduction, Recycling and Disposal Alternatives*. Draft Environmental Impact Statement, May 1988. Environmental Defense Fund. *To Burn or Not to Burn*. New York, New York, 1985.

<sup>8</sup>California Waste Management Board. *Curbside Recycling in California*. Draft, December 4, 1987.

<sup>9</sup>John Ruston. *Testimony on the Economics of Recycling and Incineration*. New York State Department of Environmental Conservation, Application for Permits for the Brooklyn Navy Yard Resource Recovery Facility, 1985.

<sup>10</sup>These alternatives are discussed later in the chapter.

<sup>11</sup>Anderson, Frederick P. et al. *Environmental Improvement Through Economic Incentives*. Washington, D.C.: Resources for the Future, 1977.

<sup>12</sup>See: Egan, Timothy. "Curbside Pickup and Sludge Forests: Some Cities Make Recycling Work." *New York Times*, October 24, 1988, page A10.

<sup>13</sup>Office of Technology Assessment. *Pollution to Prevention: A Progress Report on Waste Reduction*. Washington, D.C.: U.S. Government Printing Office, 1987.

<sup>14</sup>Hammitt, James K. and Peter Reuter. *Measuring and Deterring Illegal Disposal of Hazardous Waste*. R-3657-EPA/JMO. Santa Monica: The RAND Corporation, 1988.

<sup>15</sup>See: (1) Roe, David. "Barking Up the Right Tree: Recent Progress in Focusing the Toxics Issue." *Columbia Journal of Environmental Law* 13(1988):275-283. (2) Haag, Melinda. "Proposition 65's Right-To-Know Provision: Can It Keep Its Promise to California Voters?" *Ecology Law Quarterly* 14(1987):685-712.

<sup>16</sup>U.S. Congressional Budget Office. *Hazardous Waste Management: Recent Changes and Policy Alternatives*. Washington, D.C.: U.S. Government Printing Office, 1985.

<sup>17</sup>Since the CBO data cover only industrial generation of hazardous waste, the quantities and shares do not reflect the importance of particular commercial hazardous wastes such as spent dry cleaning solvent and waste automobile lubricating oil, both of which are containerizable and recyclable in general.

<sup>18</sup>U.S. General Accounting Office. *Illegal Disposal of Hazardous Waste: Difficult to Detect or Deter*. RCED-85-2. Washington, D.C.: U.S. Government Printing Office, 1985.

<sup>19</sup>The same approach recommended here for containerizable hazardous wastes was recently endorsed by Waste Management, Inc. for deposit-refund systems for lead-acid batteries and motorized vehicle tires.

<sup>20</sup>For more discussion of these proposals, see: Russell, Clifford S. "Economic Incentives in the Management of Hazardous Wastes." *Columbia Journal of Environmental Law* 13(1988):257-274.

By Mr. KENNEDY:

S. 1182. A bill to amend the Fair Labor Standards Act of 1938 to restore the minimum wage to a fair and equitable rate, and for other purposes; to the Committee on Labor and Human Resources.

FAIR LABOR STANDARDS AMENDMENTS OF 1989

Mr. KENNEDY. Mr. President, yesterday, the President vetoed the minimum wage legislation. The House of Representatives has now failed to override the veto, although a solid majority of the House voted to do so.

The real losers on this veto are not Democrats in Congress, but the millions of hard-working Americans who are forced to live in poverty because their employers won't pay them a living wage.

The President should understand that this is an issue where Congress has only just begun to fight. The issue is fairness and America's working poor deserve a fair increase in the minimum wage.

Today, therefore, I am reintroducing the identical bill—Fair Labor Standards Act Amendments of 1989—as adopted by the House and the Senate, and vetoed by the President.

I do so, not to say take it or leave it, as the President did with his proposal.

I reintroduce this bill today to begin what I hope is a dialog with the administration, in which we can work out the differences between our positions and achieve a fair compromise that honors the promise of the minimum wage to the working poor.

I hope we can work with this administration and resolve our differences. To begin that process, I intend to invite Secretary of Labor Dole to testify in the Senate Labor Committee next week to explain the administration's position.

If the administration continues to refuse to work with the Congress on this issue, I intend to ask the Labor Committee to mark up and report a new minimum wage bill shortly after we return from the 4th of July recess.

Sixty-three Members of the Senate voted for the minimum wage measure just vetoed. I would prefer to work out an acceptable compromise with the administration. But if that is not possible, we will try to enact a measure that has the support of a veto-proof majority in the Senate.

The President stated in his veto message that it is regrettable that this debate must end with a veto. I agree with the President. For 14 million hard working American men and women, it is more than regrettable. It is the difference between a living wage and a subpoverty wage. It is time to stop debating the issue and begin a dialog to resolve our differences. If the President believes that his veto puts an end to this issue, he is mistaken.

Over 50 years ago, we made a promise to the American people that no full-time worker should be condemned to a lifetime of poverty.

We have broken that promise for the past 8 years. The President's proposal was soundly rejected because it was a false promise, by which almost half of those entitled to an increase would have received no increase at all, because of the so-called training wage in the administration's proposal.

The training wage is a Trojan Horse. Congress should not go along with any scheme that denies an increase in the minimum wage to half the working

poor. A 6-month training wage is unacceptable. And it is certainly not what the American people understood President Bush to be saying last fall when he committed himself as a candidate to an increase in the minimum wage.

So today I renew our request to the administration to work out a good faith compromise. Six times in the past, Congress and different administrations have worked together to renew this pact with American workers, and we ought to be able to do it again.

I hope that we can have a constructive meeting with the Secretary of Labor next week. If not, we will attempt to fashion a bill with the votes necessary to override another veto.

By Mr. KENNEDY (for himself, Mr. MURKOWSKI, Ms. MIKULSKI, Mr. MOYNIHAN, Mr. DURENBERGER, Mr. SIMON, Mr. LEVIN, and Mr. DIXON):

S. 1183. A bill to provide for certain forms of assistance to Poland and Hungary to encourage the process of democratic reforms in those countries; ordered held at the desk by unanimous consent.

DEMOCRACY IN EASTERN EUROPE ACT

Mr. KENNEDY. Mr. President, I rise to introduce, along with my colleagues Senators MURKOWSKI, MIKULSKI, DURENBERGER, MOYNIHAN, SIMON, LEVIN, and DIXON, the Democracy in Eastern Europe Act of 1989. Over the past 2 years, we have stood witness to the most extraordinary changes not only in the Soviet Union, but also in many parts of Eastern Europe.

Nowhere in Eastern Europe is this change more evident than in the proud nation of Poland. Throughout history, the people of Poland have always stood at the forefront of the struggle for individual rights and liberties and the preservation of their national heritage. From Pulaski, to Popieluszko, to Lech Walesa, the Polish people have enlightened the path to freedom. They have stood firm against the scourge of tyranny, resisted their oppressors' determined efforts to erase their heritage, and rejected efforts to incorporate them into an economy and culture not their own.

Today, once again, it is the determined and independent people of Poland who have broken the yoke of oppression and who are forging the path to freedom in Eastern Europe. It is the people of Poland who are testing the limits of Secretary Gorbachev's "new thinking" and exploring just how far glasnost will reach in Eastern Europe.

Similarly, the spirit of freedom is blossoming in Hungary and the people of that nation are demanding their turn at freedom and democracy. The government has responded quickly to the swelling demand of its people with

impressive steps. In an important effort to recognize the wrongs of the past, the government has recognized the 1956 uprising as a just, popular uprising and taken steps to offer one of its greatest patriots, Imre Nagy, an honored place in its nation's history. And in perhaps the most significant and lasting reform, the government has scheduled free elections for 1990. The United States must respond with positive measures to those impressive steps.

Since the reforms in Poland began over 2 years ago, we have witnessed a gradual evolution towards a freer Poland, and the United States has reacted with a step by step reengagement with Poland. We have restored full diplomatic relations between our two nations, including the exchange of ambassadors, lifted economic sanctions imposed after the 1981 declaration of martial law, and extended agricultural and technical assistance through the American Aid to Poland Act of 1987.

The Polish Government's reforms have continued with the provision of formal legal status to the Catholic Church of Poland and with the recognition for the first time that the atrocities in the Katyn forest were committed by Stalin and not by the Nazis, as the government had maintained since World War II.

On April 5, the dramatic and historic roundtable accords were signed between the Government of Poland and representatives of Solidarity and the opposition in Poland. In strong contrast to events in another Communist country, China, the Polish Government negotiated the concerns of the people with the people. It understood that the demands for democracy of the people must be met—and met peacefully. The roundtable accords set the terms for national reconciliation among the Polish people, for the legalization of Solidarity, for economic reforms and for step-by-step democratization of Poland.

In the first free elections in Eastern Europe in four decades, the people of Poland went to the polls on June 4 to vote for a new Senate and 35 percent of the existing legislative body, the Sejm. These historic, peaceful, free, and fair elections will long be remembered as the turning point in Poland's quest for freedom. The elections verified what the people of Poland have always known—that Solidarity represents the people and their unwavering quest for liberty.

While these elections failed to hold all legislative seats up to the people's judgment, they were an impressive and critical step in the road to democracy. And they paved the way for full, free elections in 1992.

The United States ought to respond quickly and positively to applaud these impressive steps and show we

stand with the people of Poland in their struggle to be free. We also need to demonstrate our approval of the courageous steps taken by the Polish Government to bring democracy to Poland.

The bill before us puts the United States strongly behind the dramatic reforms taking place in Poland and Hungary. It extends to them the trade benefits of the Generalized System of Preferences [GSP] and the investment support and guarantees of the Overseas Private Investment Corporation [OPIC]. To continue receiving these benefits, Poland must ensure respect for the labor and human rights of its people. Current U.S. law makes respect for those rights a condition of receiving OPIC and GSP, and Congress will ensure that continued extension of these benefits will be linked to respect for these basic rights.

The bill also extends the current Science and Technology Exchange, Medical Programs and Educational and Cultural Exchanges to Poland and urges the establishment of cultural exchanges with Hungary. It also provides \$1 million to democratic institutions and activities in Hungary and Poland. These programs shall continue to be available to Solidarity and other democratic institutions in Poland. They will enable us to provide tangible support to the progress in Poland—and provide a way for us to keep the pressure for reform and democratic progress—particularly through the 1992 elections.

Finally, the bill urges the President to work with our allies and Japan to establish multiyear debt relief and programs to increase investment in each country. Poland, for example, continues to face severe crises and an oppressive foreign debt of \$39 million and is in urgent need of international credit and debt relief. The nations of Eastern Europe must continue to make meaningful social and economic reforms, but the United States and other nations also must respond with meaningful debt relief. The IMF, Paris Club, and the World Bank, in particular, must provide significant and long-term relief.

President Bush will travel to Eastern Europe in early July. I think all Members of the Senate will agree with me that he ought to be able to take with him this resolution as a tangible demonstration of United States support for the impressive democratic reforms made by Poland and Hungary. It is my hope that the Senate will pass this legislation overwhelmingly and quickly. The people of Eastern Europe are taking dramatic steps toward democracy and freedom. We should let no more time pass in supporting those efforts.

I ask unanimous consent that the full text of the bill may be printed in the RECORD following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1183

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Democracy in Eastern Europe Act of 1989".

#### SEC. 2. ELIGIBILITY OF POLAND FOR GENERALIZED SYSTEM OF PREFERENCES.

Subsection (b) of section 502 of the Trade Act of 1974 (19 U.S.C. 2462(b)) is amended by striking out "Poland" in the table within such subsection.

#### SEC. 3. OVERSEAS PRIVATE INVESTMENT CORPORATION.

(a) ELIGIBILITY OF POLAND AND HUNGARY FOR OPIC PROGRAMS.—Section 239(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2199(f)) is amended by inserting "Poland, Hungary," after "Yugoslavia".

#### (b) PARTICIPATION BY NONGOVERNMENTAL SECTOR.—

(1) IN GENERAL.—In accordance with its mandate to foster private initiative and competition and enhance the ability of private enterprise to make its full contribution to the development process, the Overseas Private Investment Corporation shall support projects in Poland and Hungary which will result in enhancement of the nongovernmental sector and reduction of state involvement in the economy.

(2) DEFINITION.—For purposes of this subsection, the term "nongovernmental sector" in Poland or Hungary includes private enterprises, cooperatives (insofar as they are not administered by the Government of Poland or Hungary), joint ventures (including partners which are not the Government of Poland or Hungary or instrumentalities thereof), businesses in Poland or Hungary that are wholly or partly owned by United States citizens, including those of Polish or Hungarian descent, religious and ethnic groups (including the Catholic Church), and other independent social organizations.

#### SEC. 4. SCIENCE AND TECHNOLOGY EXCHANGE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of State for purposes of continuing to implement the 1987 United States-Polish science and technology agreement—

- (1) \$1,500,000 for fiscal year 1990, and
- (2) \$1,560,000 for fiscal year 1991.

(b) DEFINITION.—for purposes of this section, the term "1987 United States-Polish science and technology agreement" refers to the draft agreement concluded in 1987 by the United States and Poland, entitled "Agreement Between the Government of the United States of America and the Polish People's Republic on Cooperation in Science and Technology and Its Funding", together with annexes relating thereto.

#### SEC. 5. MEDICAL SUPPLIES AND HOSPITAL EQUIPMENT AND TRAINING OF MEDICAL PERSONNEL FOR POLAND.

Notwithstanding any other provision of law, in addition to amounts authorized to be appropriated to carry out chapter 4 of part II Of the Foreign Assistance Act of 1961 (relating to the economic support fund) for fiscal years 1990 and 1991, there are authorized to be appropriated to carry out that chapter for each such fiscal year \$2,000,000, which shall be available only—

- (1) for providing medical supplies and hospital equipment to Poland through private

and voluntary organizations, including for the expenses of purchasing, transporting, and distributing such supplies and equipment, and

(2) for training of Polish medical personnel.

**SEC. 6. ASSISTANCE IN SUPPORT OF DEMOCRACY IN POLAND AND HUNGARY.**

Notwithstanding any other provision of law, in addition to amounts authorized to be appropriated to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund) for fiscal years 1990 and 1991, there are authorized to be appropriated to carry out that chapter for each such fiscal year \$2,000,000, of which—

(1) \$1,000,000 shall be available in each such fiscal year only for the unconditional support of democratic institutions and activities in Poland; and

(2) \$1,000,000 shall be available in each such fiscal year only for the unconditional support of democratic institutions and activities in Hungary.

**SEC. 7. EDUCATIONAL AND CULTURAL EXCHANGE.**

It is the sense of the Congress that the President should—

(1) encourage privately administered educational and cultural exchanges between the United States and Poland and between the United States and Hungary, through the International Research and Exchanges Board (IREX), the National Academy of Sciences, the Fulbright Educational Exchange Program, and the United States Information Agency; and

(2) consider the establishment of reciprocal cultural centers in Poland and the United States and in Hungary and the United States to facilitate government and privately funded educational exchanges.

**SEC. 8. FUTURE ECONOMIC PROGRAM.**

It is the sense of the Congress that the President should consult with our western allies and Japan on the establishment of a multiyear comprehensive program for Poland and Hungary, including debt rescheduling and increased investment, designed to facilitate an enduring economic recovery in each country in the context of a clear and binding commitment by the government of that country to establish genuine democracy and a free economy in that country.

**By Mr. MURKOWSKI:**

S. 1186. A bill to amend the Immigration and Nationality Act to revise certain health requirements regarding the admission of certain disabled veterans and to rise the period of active military service required for a veteran to qualify for naturalization; to the Committee on the Judiciary.

**REVISING CERTAIN HEALTH REQUIREMENTS WITH REGARD TO THE IMMIGRATION AND NATIONALITY ACT**

● **Mr. MURKOWSKI.** Mr. President, today I am introducing legislation which will prevent the injuries and disabilities of non-U.S.-citizen veterans of the Armed Forces of the United States which were incurred or aggravated while they were on active duty from being held against them if they subsequently seek naturalization or admission to the United States.

Since the earliest days of the Republic, our Nation has been a beacon to those who cherish liberty. When we

have been forced to take up arms in liberty's defense, that beacon has attracted to our colors the peoples of many nations. Lafayette was not the first to make our cause his own, and the Canadian citizens who fought in the Vietnam war will not be the last.

The Congress has recognized that, through service in our Armed Forces, these noncitizen soldiers have forged a bond with our country. Among other things, we have made it easier for these individuals to qualify for future citizenship by allowing them to apply for naturalization upon completion of 3 years active duty. However, it has come to my attention that there are circumstances that may defeat the purpose of congressional intent and erect an unnecessary barrier between these veterans and our country.

For example, a servicemember who is injured or disabled while on active duty may be given a medical discharge prior to the scheduled completion of his or her tour of duty. If such a medical discharge were given prior to completion of 3 years' active duty a non-citizen veteran would be denied qualification for naturalization because of a disability or injury that has incurred while in our Nation's service.

Similarly, the Immigration and Naturalization Service has the authority to deny entry to our country on the basis of health or disability. This authority is based on the sound principle that entry into the United States is solely at our discretion and that, as a nation, we should not place ourselves in a position of having to care for or support the world's ill or disabled. However, applied on a blanket basis, this principle would also apply to non-citizen veterans of the U.S. Armed Forces with service-connected disabilities which were incurred while in our service. I believe that barring entry into the United States in such circumstances is not consistent with the principles which guide this great Nation. I also note that admitting men and women with service-connected disabilities into the United States does not increase the taxpayer's obligations one cent since all U.S. veterans, without regard to their citizenship or residence, are currently entitled to both disability compensation and medical care from the Department of Veterans Affairs. I also note that the legislation would not bar INS consideration of other factors or disabilities—other than the service-connected disability—in determining suitability for entrance into the United States.

I note that 14,000 veterans residing outside of the United States receive compensation for service-connected disabilities. A substantial, but unknown, percentage of these veterans are already U.S. citizens. Thus, the number of individuals who could make use of this authority is not large.

Mr. President, the legislation I introduce today would address these issues by allowing the INS to disregard the service-connected disabilities of non-citizen veterans of the U.S. Armed Forces when assessing their health status for purposes of determining their suitability for entry into the United States. The bill would also allow a veteran to qualify for naturalization with less than 3 years' service if the veteran was discharged early because of a service-connected disability.

I believe these provisions will keep faith with those who served in our Armed Forces and were injured or disabled while in our service without adding to the burden of the U.S. taxpayer. I urge my colleagues to join with me in support of this bill. ●

**By Mr. DOMENICI:**

S. 1187. A bill to repeal the supplemental Medicare premium, to modify certain benefits added by the Medicare Catastrophic Coverage Act of 1988 and improve the financing of such benefits, and for other purposes; to the Committee on Finance.

**MEDICARE CATASTROPHIC COVERAGE IMPROVEMENT ACT OF 1989**

**Mr. DOMENICI.** Mr. President, everyone knows that catastrophic health insurance came about here in the U.S. Congress because President Ronald Reagan asked that catastrophic chronic illness in the hospitals of this country postmedical care coverage, be covered in some way, and that we call it catastrophic health insurance. It was just about that simple. It grew a little bit; it came to the Senate and grew a little more in terms of benefits, and it seemed that all the citizen groups supporting seniors were for the concept, even as you added benefits and, inevitably, added costs and put some kind of a surtax on to pay for it. It left the Senate, went to the House, with that kind of atmosphere, and then in a mild topsy-like approach, not a big topsy, but a mild topsy, the House had done one a little differently.

Then we go to conference and add them together and add some more. That is sort of the evolution of what was then called catastrophic health insurance. It ends up, because of that, with a surtax that can be as high as \$1,200 in 2 or 3 years on a number of senior citizens, and it is a surtax on income tax to pay for this catastrophic, which is no longer voluntary.

I think everyone thought the seniors wanted all the coverage and that they would be glad to pay for it, or that they wanted all the coverage and would not like to pay for it—wanted it for free.

I asked my senior citizens, and I got a rather incredible response. Huge numbers answered, and said that, "We do not need it all, and we do not want it free. We would like you to scale it

down to the things we need and want most, and we will pay for them. We do not think we need a surtax for that."

I tailored a bill which is much like one I introduced in 1987, to what I think are the fundamental catastrophic health needs. There will need be no surtax. It will start with a flat fee, and when all the benefits are in, there will still be no surtax, but it might be as much as \$8, \$9, \$10 a month in 2 or 3 years, but we will not have all of the benefits that were in the final package that evolved with a lot more finesse than I described it here today, from a very small package to a little bigger one, and to a compilation of the two, with even more added, because there seemed to be enough money.

I am very hopeful that the Finance Committee in good faith—because the U.S. Senate voted for them to take another look—will do just that, look at bills such as mine, which I think take care of the basic concepts of catastrophic health insurance, and are affordable by all; and in that context, need not be made mandatory. Most will indeed sign up for it, but they really would like the flexibility to look at their own plans. I believe they ought to have that. These concepts are built into this bill.

I send the statement, bill, and recapitulation of what my senior citizens told me in large numbers, and the questionnaire that I sent them, which was quite detailed, and which they answered diligently, far beyond what many people around here think. They would think they want it all and want it free, and I found that was not the case. I send the measures to the desk for appropriate referral and installation in the RECORD and I ask unanimous consent that the statement be admitted, as it read.

There being no objection, the bill and statement were ordered to be printed in the RECORD, as follows:

S. 1187

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Catastrophic Coverage Improvement Act of 1989".

#### SEC. 2. REPEAL OF CERTAIN MEDICARE CATASTROPHIC COVERAGE PROVISIONS AND SUPPLEMENTAL MEDICARE PREMIUM.

(a) GENERAL REPEAL.—The following provisions of the Medicare Catastrophic Coverage Act of 1988, as amended by the Technical and Miscellaneous Revenue Act of 1988, are hereby repealed, and the Social Security Act shall be applied and administered as if such provisions (and the amendments made by such provisions) had not been enacted:

- (1) Section 112.
- (2) Section 202.
- (3) Section 203.
- (4) Section 204.
- (5) Section 205.
- (6) Section 211 (c), (c)(1), (c)(2), and (c)(3)(A).
- (7) Section 212.

(8) Section 301.

(9) Section 302.

(b) SUPPLEMENTAL MEDICARE PREMIUM REPEAL.—Section 111 of the Medicare Catastrophic Coverage Act of 1988, is hereby repealed, and the Internal Revenue Code of 1986 shall be applied and administered as if such section (and the amendments made by such section) had not been enacted.

(c) STUDY BY HHS TO RESTORE REPEALED MEDICARE BENEFITS.—No later than January 1, 1990, the Secretary of Health and Human Services or the Secretary's delegate shall conduct a study and submit a report to the Congress regarding the Medicare benefits repealed by subsection (a) (including possible modifications of such benefits) and methods of financing such benefits if such benefits were reinstated.

(d) SENSE OF THE CONGRESS REGARDING REPEALED MEDICAID PROVISIONS.—It is the sense of the Congress that the provisions relating to the medicaid program in the repealed sections 301 and 302 of the Medicare Catastrophic Coverage Act of 1988 should be restored within the framework of the budget resolution for fiscal year 1990.

(e) EFFECTIVE DATE.—The repeals made by subsections (a) and (b) of this section shall take effect as if included in the Medicare Catastrophic Coverage Act of 1988.

#### SEC. 3. MODIFICATION OF PART A BENEFITS.

(a) DEDUCTIBLE HOLD-HARMLESS ELIMINATED.—Paragraph (1) of section 1813(a) of such Act (42 U.S.C. 1395(a)) is amended—

(1) by striking subparagraph (C) and redesignating subparagraph (D) as subparagraph (C), and

(2) by striking "Subject to subparagraph (C), the" in subparagraph (A) and inserting "The".

(b) SPELL-OF-ILLNESS HOLD-HARMLESS ELIMINATED FOR 1990.—Subsection (b) of section 102 of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "or 1990" in paragraphs (1) and (2).

(c) EFFECTIVE DATES.—The amendments made by this section shall take effect on January 1, 1990, and shall apply—

- (1) to the inpatient hospital deductible for 1990 and succeeding years, and
- (2) to care and services furnished on or after January 1, 1990.

#### SEC. 4. OVERALL MEDICARE CATASTROPHIC LIMIT.

(a) IN GENERAL.—Paragraph (3) of section 1833(c) of the Social Security Act (42 U.S.C. 1395(c)) is amended to read as follows:

"(3)(A) The catastrophic limit for 1990 is \$2,500. The catastrophic limit for succeeding years is an amount (rounded to the nearest multiple of \$10) as the Secretary estimates will result, in that succeeding year, in the same percent of the average number of individuals enrolled under this part (other than individuals enrolled with an eligible organization under section 1876 or an organization described in subsection (a)(1)(A)) during the year becoming entitled to benefits under this subsection as became entitled to benefits under this subsection in 1990.

"(b) Not later than September 1 of each year (beginning with 1990), the Secretary shall promulgate the catastrophic limit under this paragraph for the succeeding year."

(b) PART A DEDUCTIBLES AND COINSURANCE INCLUDED IN LIMIT.—Subparagraph (A) of section 1833(c)(2) of such Act (42 U.S.C. 1395(c)(2)) is amended to read as follows:

"(A) the deductions and coinsurance amounts established under subsection (b) and section 1813, and"

(c) CONFORMING AMENDMENTS.—

(1) Section 1833(c) (42 U.S.C. 1395(c)) and section 1842(b)(3)(I) (42 U.S.C. 1395u(b)(3)) of such Act are each amended by striking "part B" or "under part B" each place it appears.

(2) Section 1833(c)(5)(B)(ii) of such Act (42 U.S.C. 1395(c)(5)(B)(ii)) is amended by striking "other than with respect to covered outpatient drugs".

(3) Section 1833(c)(5)(D)(i) of such Act (42 U.S.C. 1395(c)(5)(D)(i)) is amended by striking "(other than covered outpatient drugs)".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1990.

#### SEC. 5. EXTENSION OF HOME HEALTH SERVICES DELAYED.

Subsection (b) of section 206 of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "January 1, 1990" and inserting "October 1, 1990".

#### SEC. 6. INCREASE IN PART B PREMIUM.

(a) IN GENERAL.—Section 1839(a) of the Social Security Act (42 U.S.C. 1395r(a)) is amended—

(1) in paragraph (1) by striking all after "(a)(1)" and inserting in lieu thereof the following:

"(A) The Secretary shall, during September of 1989 and of each year thereafter, determine the monthly actuarial basic rate and the monthly actuarial catastrophic illness rate for enrollees age 65 and over which shall be applicable for the succeeding calendar year.

"(B) The monthly actuarial basic rate determined under this paragraph for a calendar year shall be the amount the Secretary estimates to be necessary so that the aggregate amount for the calendar year with respect to those enrollees age 65 and over will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees (excluding benefits payable under section 1833(c)).

"(C) The monthly actuarial catastrophic illness rate determined under this paragraph for a calendar year shall be equal to the sum of—

"(i) the amount the Secretary estimates to be necessary so that the aggregate amount for the calendar year with respect to those enrollees age 65 and over will equal the total of the benefits and administrative costs which he estimates will be payable from—

"(I) the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative services costs incurred in such calendar year with respect to such enrollees under section 1833(c), and

"(II) the Federal Hospital Insurance Trust Fund, which are attributable to the Medicare Catastrophic Coverage Act of 1988, as amended by the Medicare Catastrophic Coverage Improvement Act of 1989, and

"(ii) the amount (if any) that the Secretary estimates to be necessary to offset any amounts—

"(I) by which the monthly premiums otherwise payable under this section with respect to such enrollees for such calendar year (disregarding subsections (b) and (f)) are reduced by reason of the limitation imposed by subsection (f), and

"(II) that are attributable (as determined by the Secretary) to the portion of such monthly premiums that is determined under paragraph (3)(A).

"(D) In calculating the monthly actuarial rates under this paragraph, the Secretary shall include appropriate amounts for a contingency margin."

(2) in paragraph (2) by striking "1983" and inserting in lieu thereof "1989",

(3) in paragraph (3)—

(A) by striking "1983" in the first sentence and inserting in lieu thereof "1989", and

(B) by striking the second sentence and inserting in lieu thereof the following: "The monthly premium shall (except as otherwise provided in subsection (e)) be equal to the sum of—

"(A) a weighted average of the monthly actuarial catastrophic illness rate for enrollees age 65 and over, determined under paragraph (1) of this subsection, and that rate for disabled enrollees under age 65, determined under paragraph (4) of this subsection, for that calendar year, and

"(B) the smaller of—

"(i) the monthly actuarial basic rate for enrollees age 65 and over, determined according to paragraph (1) of this subsection, for that calendar year, or

"(ii) the monthly payment rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 215(a)(1), based upon average indexed monthly earnings of \$900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on November 1 of the year before the year of the promulgation. He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals for the following November 1.", and

(C) by striking "amount of an adequate actuarial rate for enrollees age 65 and over as provided in paragraph (1)" in the third sentence and inserting in lieu thereof "amounts of adequate actuarial rates for enrollees as provided in paragraphs (1) and (4)", and

(4) by striking paragraph (4) and inserting in lieu thereof the following:

"(4)(A) The Secretary shall also, during September of 1989 and of each year thereafter, determine the monthly actuarial basic rate and the monthly actuarial catastrophic illness rate for disabled enrollees under age 65 which shall be applicable for the succeeding calendar year.

"(B) The monthly actuarial basic rate determined under this paragraph for a calendar year for shall be the amount the Secretary estimates to be necessary so that the aggregate amount for the calendar year with respect to disabled enrollees under age 65 will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees (excluding benefits payable under section 1833(c)).

"(C) The monthly actuarial catastrophic illness rate determined under this paragraph for a calendar year shall be equal to the sum of—

"(i) the amount the Secretary estimates to be necessary so that the aggregate amount for the calendar year with respect to disabled enrollees under age 65 will equal the total of the benefits and administrative costs which he estimates will be payable from—

"(I) the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative services costs incurred in such calendar year with respect to such enrollees under section 1833(c), and

"(II) the Federal Hospital Insurance Trust Fund, which are attributable to the Medicare Catastrophic Coverage Act of 1988, as amended by the Medicare Catastrophic Coverage Improvement Act of 1989, and

"(ii) the amount (if any) that the Secretary estimates to be necessary to offset any amounts—

"(I) by which the monthly premiums otherwise payable under this section with respect to such enrollees for such calendar year (disregarding subsections (b) and (f)) are reduced by reason of the limitation imposed by subsection (f), and

"(II) that are attributable to the portion of such monthly premiums that is determined under paragraph (3)(A) (as determined by the Secretary).

"(D) In calculating the monthly actuarial rates under this paragraph, the Secretary shall include appropriate amounts for a contingency margin."

#### (b) CONFORMING AMENDMENTS.—

(1) Section 1839(e)(1) of the Social Security Act (42 U.S.C. 1395r(e)(1)) is amended—

(A) by striking "monthly premium" and inserting in lieu thereof "portion of the monthly premium otherwise determined under subsection (a)(3)(B)", and

(B) by inserting "basic" after "actuarial".

(2) Section 1840 of such Act (42 U.S.C. 1395s) is amended by adding at the end thereof the following new subsection:

"(i) Notwithstanding the previous provisions of this subsection, premiums collected under this part which are attributable to the monthly actuarial catastrophic illness rate established under subsections (a)(1)(C)(i)(II) and (a)(4)(C)(i)(II) of section 1839 shall, instead of being transferred to (or being deposited to the credit of) the Federal Supplementary Medical Insurance Trust Fund, be transferred to (or deposited to the credit of) the Federal Hospital Insurance Trust Fund."

(3) Section 1841B of such Act (42 U.S.C. 1395t-2) is amended—

(A) by striking "and section 59B of the Internal Revenue Code of 1986," in subsection (a),

(B) by striking "and for purposes of section 59B of the Internal Revenue Code of 1986" in subsection (a),

(C) by striking subparagraphs (A), (B), and (C) of subsection (b)(1) and inserting the following new subparagraphs:

"(A) credited for receipts of the Federal Supplementary Medical Insurance Trust Fund attributable to the premiums under section 1839(a), attributable to the monthly actuarial catastrophic illness rate (determined without regard to section 1840(i)), and

"(B) debited for outlays made under this title that are attributable to the amendments made by the Medicare Catastrophic Coverage Act of 1988, as amended by the Medicare Catastrophic Coverage Improvement Act of 1989,"

(D) by striking "those receipts which are also receipts of the Federal Hospital Insurance Catastrophic Coverage Reserve Fund," in subsection (b)(4), and

(E) by striking subsection (c) and inserting the following new subsection:

"(c)(1) The Secretary of the Treasury shall publish in the Federal Register not later than July 1 of each year (beginning with 1990), information on—

"(A) the outlays made from the Account in the preceding year, and

"(B) the balance in the Account as of the close of the preceding year.

"(2) The Secretary shall report to Congress, not later than July 1 of each year (beginning with 1990), respecting the distribution of outlays from the Account in the previous year among major spending categories. The Comptroller General shall report, not later than September 1 of each year, to Congress concerning the completeness and accuracy of the Secretary's report under the previous sentence."

(4) Subsections (a)(1)(A)(i) and (a)(1)(B)(i) of section 1844 of such Act (42 U.S.C. 1395w) are each amended by striking "twice the dollar amount of the actuarially adequate rate" and inserting in lieu thereof "the sum of the dollar amount of the actuarially adequate catastrophic illness rate and twice the dollar amount of the actuarially adequate basic rate".

(5) Section 1876(a)(5) of such Act (42 U.S.C. 1395mm(a)(5)) is amended—

(A) in the matter preceding subparagraph (A), by striking "200 percent of", and

(B) in subparagraphs (A)(ii) and (B)(ii), by striking "monthly actuarial rate" and inserting in lieu thereof "the sum of the monthly actuarial catastrophic illness rate and twice the monthly actuarial basic rate".

#### (c) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) of this section shall apply to monthly premiums for months beginning with January 1990.

(2) The amendments made by subsection (b) of this section shall take effect on January 1, 1990.

#### SEC. 7. STUDY AND REPORTS BY OPM DELAYED.

Section 423 of the Medicare Catastrophic Coverage Act of 1988 is amended by striking "April 1, 1989" each place it appears and inserting "April 1, 1990".

Mr. DOMENICI. Mr. President, today I am introducing a bill to improve the controversial catastrophic illness law, conforming it more closely to the wishes of those who are supposed to benefit from it. I urge the Senate Finance Committee to consider this option as it reviews the catastrophic illness law.

Most of the Finance Committee members oppose a delay in some of the benefits and the surtax. Last week, they won a very close vote on the Senate floor, but they agreed to review the financing of the law, consider delaying the surtax and some benefits, and consider making the program voluntary.

There are many reasons to review the law. Most important, of course, many, many older Americans question whether all these benefits are really worth the costs—costs which Medicare beneficiaries alone pay. There is uncertainty over how much revenue the surtax will bring in. Likewise, there's a lot of uncertainty about how much some of the benefits—particularly the prescription drug benefit—will cost.

Let's step back for a second to think about the evolution of catastrophic illness law.

The President's original plan was basic—long-term hospitalization cover-

age and a stop-loss to limit the amount Medicare enrollees could pay for deductibles and coinsurance. A flat premium covered all the costs.

In 1987, I introduced a proposal with Senators DOLE, CHAFEE, DANFORTH, and DURENBURGER to protect older Americans from the devastating costs of catastrophic illness. Many older Americans had written to me about the terrible costs of an extended hospital stay. Without going into detail, our proposal was voluntary and financed without any surtax—bare bones compared to what finally passed Congress.

The Senate Finance Committee passed a bill with even slightly more benefits. An income-related premium had been added, but the program remained voluntary and the income-related premium was modest. On the Senate floor, prescription drug coverage was added. Premiums had to be increased.

Then, in conference with the House, added benefits included in the House bill were added, new benefits that were not in either the House or the Senate bill were added, costs were increased, and the surtax was made mandatory. In short, the catastrophic illness law that finally emerged from Congress in 1988 was far more expensive, it was mandatory, and it was far more expensive than the one I had proposed.

That is what we finally voted on. We had only two choices—no catastrophic coverage at all, or this expensive bill. I thought the protection this bill offered was important, so I voted in favor of the costly version. Even so, I expressed my reservations on the Senate floor about this costly, expanded law:

I must say I am amazed at the extent to which new benefits have been added—benefits that are not necessarily related to catastrophic health expenses. . . . These benefits have clearly increased the cost of the program.

Catastrophic care is not the only health care need of the elderly or the American people generally. Indeed, by most estimates it represents a rather modest extension.

I am quite concerned that there will be a backlash from older Americans when they find out exactly how costly these new benefits are. In the end, my concern is that the underlying financing structure—particularly the income-related premium that will be administered through the tax system—will prove unsustainable. . . . The huge tax increase is going to surprise many older Americans.

Finally, I must caution my fellow Senators and my constituents: As we credit ourselves with reducing the individual's financial expenses related to catastrophic illness, we must not obscure the fact that we have also imposed significant new premiums and taxes on Medicare beneficiaries.

I doubt anyone meant to mislead the Nation's Medicare beneficiaries, but the fact is, many, many older Americans believed this bill was something it wasn't. Some older Americans thought we were providing long-term health

care. Others thought they were getting full protection from all costs. Very few understood what beneficiary financing meant.

When I voted for this bill, I voted for it because I thought it was something older Americans wanted. Though I'll admit their understanding is certainly not perfect, older Americans now have a better understanding of this law. By and large, they do not like it.

I heard of so much opposition that in March I sent many older New Mexicans a description of the catastrophic illness law and a ballot asking for their opinions on the law.

The ballot described the catastrophic law. It included several questions and answers to clear up some negative misconceptions about the catastrophic health law. I sent this ballot to older Americans who had not written on the topic, as well as those who had. In other words, this ballot was objective. I ask unanimous consent that the ballot be included in the RECORD.

There being no objection, the ballot was ordered to be printed in the RECORD, as follows:

#### CATASTROPHIC ILLNESS BALLOT

Dear SENATOR PETE: Below are my answers to your questions on the new catastrophic illness law.

*Question No. 1: The Most Important Benefits.* Where I have placed a (1) shows the most important benefit to me, a (2) is the second most important, and so on until (6), which is the least important of the benefits you have listed.

— Covers all hospital costs, except for the \$560 deductible.

— Limits what I pay for non-hospital services, such as physician care, to about \$1,400 per year.

— Coverage for most prescription drug costs, once I have paid \$600 yearly.

— Help for my spouse is provided if I became a patient in a Medicaid nursing home. That protects our income and assets, rather than spending everything on care.

— Limited respite care for up to 80 hours for persons who are chronically ill and homebound and who have other heavy health expenses.

— Expanded home health care and skilled nursing home benefits.

*Questions No. 2: Options.* Here are some of the options, Senator Pete, Congress will consider. I have indicated with an "X" the one or two that I support to pay for the program.

— Repeal all of the benefits and all of the premiums. Medicare beneficiaries, of course, would again face the threat of a financial catastrophe from a long hospital stay or high doctor bills, but they could get coverage on their own from private insurers.

— Make the benefits more limited, possibly covering costs above \$2,500 a year. Cut out benefits such as respite care, more home-health coverage, and prescription drug coverage. New costs could be covered by a flat premium to the Part B program. And those who did not want the coverage could drop Part B entirely. This would make the law close to the one you, Senator Pete, proposed originally.

— Keep the current benefits and current financing, but allow people to drop out of

the program if they do not want Part B coverage in Medicare. Those with lower incomes, as well as those who did not choose Part B coverage, would not pay the premium or the surtax.

— Keep the law as it is.

— Delay the new benefits and new premiums until Congress can review the program.

Mr. DOMENICI. The response was overwhelming. If there's a silent majority—or even silent minority—out there that supports the catastrophic law as it is now, I did not find it.

Almost every new Mexican who responded to the ballot supported major changes in the law. To date, about 20 percent supported complete repeal of the entire law. About 60 percent supported a delay in the program, giving Congress time to review it. About 40 percent urged that we return to a simpler, less costly program, similar to the one I sponsored in 1987.

Many respondents also opposed the mandatory nature of the law, although most wanted more significant changes than just making the program voluntary by tying it to part B of Medicare.

Perhaps the most startling aspect of the response to my ballot was the number of older Americans who made additional comments. Usually, about 5 percent of the new Mexicans I question in ballots include additional comments. So far, on this ballot, 49 percent have included added comments. This tells me how strongly my constituents feel about this issue.

I think the point Senator GRAMM made last week during the floor debate on the McCain amendment is worth restating. The Catastrophic Illness Act was historic, an entitlement financed by the beneficiaries. In fact, many older Americans oppose the bill on that point in particular—that no one else has had to self-finance their benefits.

But many older Americans are not against the concept of paying for the added benefits, they are just against paying for this package of benefits—many whom already had such coverage—in this particular way. What we are finding is that the beneficiaries are not so sure that they want the entitlement if they have to pay for it.

The older citizens of New Mexico want the surtax repealed; they are willing to do without some or all of the benefits. That indicates to me, at a minimum, Congress should limit the catastrophic law so it is similar to the bill I introduced in 1987, and similar to the one I am reintroducing today.

This proposal is inexpensive relative to what passed last summer. Most important, it is financed without a mandatory surtax on Medicare beneficiaries.

I have made modifications to my 1987 proposal to limit costs and include features some older Americans

believe are most important and worth the cost. I refer to some limited expansions of home health and skilled nursing facility costs, and financial protection for a spouse at home when someone enters a nursing home, the so-called spousal impoverishment law. Briefly, my proposal would:

Repeal the Medicare supplementary premium (or surtax), as if it had never been enacted. Adjustments would have to be made for those who have already started making tax payments for the catastrophic illness law.

Repeal several new and noncatastrophic Medicare benefits that were included in last year's catastrophic law, but which have yet to go into effect. These include the prescription drug benefit, intravenous drug therapy services, the screening mammography benefit, and the so-called respite care benefit. I understand the importance of these benefits, but they are outside the original and basic intent of the catastrophic illness protection. They should not be financed by the premiums for catastrophic coverage.

Provide unlimited hospital coverage without coinsurance after one hospital deductible per year, consistent with my 1987 bill and last year's catastrophic law. Most older Americans support this protection.

Retain two other important Medicare benefits in last year's catastrophic illness law—the expanded home health and expanded skilled nursing benefits without a prior hospitalization requirement. Medicare would cover home health benefits for 38 days of continuous care. These important benefits may serve as an alternative to extended hospital stays.

Include a catastrophic "stop-loss," returning its structure to that in my 1987 proposal. The annual ceiling on beneficiary liability applies to both part A and part B Medicare coinsurance and deductibles. It covers only those voluntarily enrolled in Medicare part B. The out-of-pocket cap of \$2,500 in 1990 would be indexed to program growth. Unlike last year's law, in which only part B expenses count toward the cap, beneficiary expenses for all Medicare deductibles and coinsurance would count toward the cap.

Return to the flat premium financing I proposed in 1987. Starting in 1990, the costs of the expanded Medicare part A benefits and the catastrophic cap would be financed through an actuarially sound premium added to the basic part B premium. If beneficiaries did not want this coverage, they could drop part B of Medicare. I doubt few would drop part B of Medicare because it remains a good deal. Nonetheless, beneficiaries would have that option.

Based on preliminary CBO estimates, though this flat premium may be a little higher in 1990 and 1991, it

would be about the same as the flat premium established in last year's catastrophic law by 1992 and after. And, most important, there would be no added surtax. None.

Since the premium would be based on the actual costs of the program, beneficiaries would not pay more in premiums than the total benefit payout, as may not be occurring under the program signed into law last summer.

An older American, who might have been paying as much as \$1,200 per year by 1993 under last summer's law, would now pay only about \$150 per year by 1993 under this proposal.

Retain the new spousal impoverishment protection under the Medicaid program. This is a benefit directly related to the catastrophic expenses of an extended nursing home stay.

In summary, my proposal is an attractive alternative to last summer's law. It meets the general requirement that premiums cover benefit costs and that the new coverage not increase the deficit relative to the Medicare program without catastrophic illness coverage. It is similar to the legislation I sponsored in 1987, but includes a few changes to accommodate benefits that my constituents told me they support most strongly.

Much less expensive than last year's legislation, my proposal allows Congress to repeal surtax financing. At the same time, it retains the key hospitalization and catastrophic provisions. This proposal is voluntary, although anyone who opts out would lose other important benefits. The flat premiums are manageable for older Americans.

I know this is a complicated and sensitive area, so I have introduced this bill as one possible alternative for Congress and the Finance Committee to consider. I'll also note that many older Americans are so angry over the new law that we may consider complete repeal, including provisions already in effect. If Congress and the Finance Committee heed the views of older Americans, this proposal I offer today will receive serious consideration.

In addition, I also am co-sponsoring S. 335, introduced by Senator McCAIN. I'm sure we are going to consider that alternative again here on the Senate floor. There is no reason that seniors should pay this burdensome tax while Congress is reviewing the law, and considering options, such as the bill I offer today.

S. 335 is an appropriate place to start. It doesn't commit Congress to anything. It just gives us more time to assess all the complaints we are hearing about this law, consider alternatives such as the one I offer and assess the revenue stream flowing into catastrophic coverage.

I express my appreciation to the Finance Committee for reviewing the catastrophic law. I hope they seriously consider proposals such as the one I have offered today.

By Mr. MURKOWSKI:

S. 1188. A bill to amend title 38, United States Code, and the Internal Revenue Code of 1986 regarding the use of Internal Revenue Service and Social Security Administration data for income verification for purposes of laws administered by the Department of Veterans Affairs; to the Committee on Finance.

USE OF INTERNAL REVENUE SERVICE AND SOCIAL SECURITY ADMINISTRATION DATA BY DEPARTMENT OF VETERANS AFFAIRS

● Mr. MURKOWSKI. Mr. President, today I am reintroducing legislation which would: First, protect the integrity of needs based veterans programs; second, provide significant reduction in unnecessary Federal outlays and, therefore, make a significant contribution to deficit reduction; and third, accomplish these goals without reducing benefits to the intended beneficiaries.

This legislation would accomplish these goals by allowing the VA to compare the income amounts now self-reported to VA by benefit recipients to the amounts reported for tax and social security purposes by third parties. If VA benefits are being paid or provided based on erroneous income reporting by the beneficiary, the VA would determine the correct income amount and adjust the level of service or benefits to the level to which the beneficiary is actually entitled.

I emphasize that this legislation would not set a precedent for the non-tax use of these data. On the contrary, other federally funded needs based programs such as Food Stamps and Supplemental Security Income have had access to these data for almost half a decade. Nor would this legislation provide the VA with access to the income tax returns filed by individual veterans or survivors. The data concerned are contained in the information returns filed by employers and other third parties.

The legislation contains specific provisions intended to protect the confidentiality of the information obtained and used by the VA. It would also require the VA provide any beneficiaries affected with notice, and a chance to rebut the data, before VA takes any adverse action.

The need for this legislation is clear. In 1985 I asked the GAO to determine the amount of misreporting in the major needs based income maintenance program administered by VA, nonservice-connected disability pension. The GAO's report—Veterans' Pensions: Verifying Income with Tax Data Can Identify Significant Payment Problems, GAO/HRD-88-24

dated March 1988—provides dramatic evidence that a significant amount of pension payments are being made to individuals who do not meet the eligibility requirements established by the Congress.

The GAO, after obtaining specific and limited authorization from the Joint Committee on Taxation, compared the income data reported to VA by 1.4 million pension recipients against the tax data provided to the Government by third party sources. The GAO used the same data now available under current law to other Federal needs based program administrators.

The GAO found that 549,000 beneficiaries—over one-third—had \$947 million more income on tax records than was recorded on VA records. After adjusting for cases where the VA should have been able to independently identify the discrepancy, and disregarding discrepancies of less than \$100, the GAO concluded that the VA was unable to identify \$157.2 million in potential pension overpayments because it lacks the access to tax data now available to other agencies administering needs based programs.

Mr. President, there are too few dollars available to meet the needs of America's veterans to allow over \$150 million to be paid to veterans who do not meet the eligibility requirements established by the Congress. That is why, in the 100th Congress, the Committee on Veterans' Affairs included provisions to address this situation in S. 2011. That is why the Senate agreed to those provisions last year.

I recognize that the Committee on Finance is looking at the general question of using tax data for nontax purposes such as enforcement of eligibility criteria for Federal programs. I am introducing this bill to emphasize the importance of protecting the integrity of veterans' programs and the benefits available to the Nation through enactment of legislation such as this bill.

Mr. President, this legislation has three primary features.

The first gives the VA access to wage and income information already collected from third parties by the Treasury Department and Social Security Administration and already available to other Federal agencies administering income based benefits and programs. VA would use this information to verify eligibility for nonservice-connected veterans' disability and survivors' pensions, dependency and indemnity compensation paid to parents of individuals who die on active duty or due to a service-connected cause, veterans with service-connected disabilities evaluated less than 100 percent disabling but who are paid at the 100-percent rate because they are unemployable due to their disability, and veterans who are eligible for VA

health care without payment because of their low income.

The second feature explicitly protects the confidentiality of the data which would be obtained and used by VA.

The third feature requires the VA to provide veterans with notice that income information they provide to VA will be verified. It would also require VA to protect the rights of beneficiaries in the event of an apparent discrepancy by notifying the beneficiary of the nature of the discrepancy and providing the beneficiary with an opportunity to reply before VA could take any adverse action.

Mr. President, this bill is nearly identical to one which was approved by the Committee on Veterans' Affairs and passed by the Senate during the last session of Congress. This bill, however, has been modified to include specific language which would add notification and agreement requirements in the case of veterans' health care.

Under current law, eligibility for hospital, nursing home, and outpatient care are based, in part, on the veteran's income. VA is prohibited from treating those veterans determined—as the result of self-reported income data—to be so-called category C veterans unless the veteran agrees to pay a modest copayment. Category C veterans are those with non-service-connected disabilities who have annual incomes over \$21,995—for a single veteran.

It is important to note that over 50 percent of all health care provided by VA is for veterans who are not required—as a result of income—to pay a deductible but are eligible for VA health care as a result of limited income.

The provision in this bill would also prohibit the VA from furnishing medical-care services to veterans eligible for such care based on income—the 50 percent mentioned above—unless: First, the VA has notified the veteran that the income information furnished by the veteran will be compared with information obtained by the Social Security Administration or the Department of the Treasury, and second, the veteran has agreed to pay the United States the applicable amount if a determination is made that the veteran is required by law to do so.

The purpose of this provision is to protect the veteran by making explicit the VA's requirement to notify that income data will be verified. Additionally, the veteran would know prior to receiving care of the possible cost associated with receiving VA health-care services if such validation determines that the veteran underreported his/her income. In fact, the veteran would have to agree to make such copayments, if necessary, prior to receiving VA care.

Mr. President, if enacted, this legislation would reduce the deficit or increase the amount of funds available for veterans' benefits without reducing or terminating the benefits of veterans or survivors who meet the eligibility requirements established by the Congress. This is a "win-win" situation that we in the Congress rarely encounter. I urge my colleagues to join me in support of this legislation.●

By Mr. KERRY:

S. 1189. A bill to amend the Coastal Zone Management Act of 1972 to require State coastal zone management agencies to prepare and submit for the approval of the Secretary of Commerce plans for the improvement of coastal zone water quality, and for other purposes; to the Committee on Commerce, Science, and Transportation.

#### COASTAL ZONE IMPROVEMENT ACT

Mr. KERRY. Mr. President, as the summer begins and beach season opens the memory of last summer's closed beaches, medical waste on the shores and contaminated shellfish beds, underscores the necessity that now is the time for Congress to focus its attention on an environmental threat of historical unprecedented proportions—the destruction of our coastline and the fouling of our oceans and coastal waters. This environmental crisis is as serious as any we have had to come to grips with before; and it is getting worse.

Our oceans, coastal waters, estuaries, and wetlands have come under extreme stress from a combination of human activities such as population growth, waste disposal practices, the dumping of toxics, and global warming.

For that reason, today I and a number of my colleagues who represent different committees with oversight of ocean and coastal issues in both the House and Senate are introducing a variety of legislative initiatives which strengthen the two laws that govern our coasts—the Clean Water Act and the Coastal Zone Management Act. The legislation I am introducing today improves and bolsters the Coastal Zone Management Act, and requires State coastal zone management agencies to implement an overall plan that preserves, protects, and restores coastal waters.

Mr. President, the fact of the matter is, that 75 percent of the Nation's population will live within 50 miles of the U.S. coast by the year 2000—9 out of 10 of the largest urban areas sit on America's coastline.

In addition, wetlands, the nursery and spawning grounds to our fisheries, contribute an estimated \$5 billion annually to the production of fish and shellfish in the United States, yet 50 percent of the Nation's wetlands have

already been destroyed. In fact, experts estimate that 25,000 acres of wetlands are lost each year in coastal Louisiana alone.

Furthermore, nonpoint source pollution such as agricultural runoff and acid rain is increasingly degrading our water quality and choking our marine life. While pollutants which directly discharge into the coastal waters are poisoning our fish. In fact, according to the Coast Alliance, in New England, sewage treatment plants and industries discharge an estimated 575 billion gallons of contaminated wastewater into the ocean each year, while another 700 billion gallons of polluted stormwater pours into the sea annually. Consequently last year alone over half of the Massachusetts shellfish beds were closed due to contamination at a \$71 million economic loss to the State's industry.

What all this spells out to me, is there is a clear link between coastal water quality and land use. And it highlights the fact that coastal planning and development control measures are essential to our coastal protection.

Mr. President, while we can estimate the dollars lost to our industries, no one can put a price tag on the incalculable treasure of a single seashore refuge, or a coastal barrier. How does one measure the loss of wildlife and fish that for millennia have inhabited our coastal areas?

One issue of particular concern to me that my legislation addresses is global warming and the dire need to plan for unprecedented sea level rise. It is estimated that global warming caused by an overwhelming increase of man-made gases pouring into our atmosphere from such activities as the burning of fossil fuels, deforestation, and the production of chlorofluorocarbons, will result in a sea level rise of 1 meter or more by the year 2050.

This expected sea level rise will result in a loss of beaches, dunes, estuaries and wetlands, and the life that they sustain, as well as destroy drinking water supplies, buildings and coastal infrastructures. Some experts have even calculated that a 1½-foot sea level rise in Massachusetts could wipe out over 10,000 acres of ocean front property worth at least \$10 billion.

In Charleston, SC, it is anticipated that if the sea level rises 1½ feet, the negative economic impact to the city on damages to just the Charleston Peninsula alone are estimated at almost \$1 billion.

And, a recent United Nations study predicts that by the year 2100 at least 50 percent and as much as 80 percent of America's total wetlands will be lost to sea level rise.

Mr. President, the picture is grim. It is calamity if we sit idly by and fail to act. However, experts suggest that there may be as much as a 20 year lag

time until the actual effects of sea level rise are upon us. Nature has offered us 20 years to prepare for what could be the difference between the life and death of our coastal ecosystem. But the grains of sand are slipping through the 20 year ecological time glass.

While we work to eliminate the causes of global warming, we must simultaneously study, develop, and implement strict plans that prepare for such sea level rise. The legislation I am introducing today requires such planning. Furthermore to change the course of the existing overall coastal degradation it provides a stronger link between existing State water quality agencies and State coastal zone management agencies.

It addresses coastal pollution and requires State coastal zone management agencies to establish and implement an overall plan that preserves, protects and restores coastal waters. The plan will, deal with land and water uses that affect coastal water quality; reduce coastal pollution; and preserve wetlands and marine habitats—fish, shell fish, wildlife and so forth.

The plan designates certain coastal waters of outstanding national significance. These are waters that are not yet polluted but should be preserved, that is, national parks, wildlife refuges, recreational areas and waters of particular ecological significance.

It also identifies areas that are already polluted and makes them a priority for action. The bill provides greater coordination between, State, local, and the Federal Government on implementing the required plan and offers funding and technical assistance to carry it out. It further establishes model ordinances for State and local governments. The bill authorizes \$35 million each year for 4 years for States to implement their plan.

As I stated earlier the legislation includes a section on sea level rise planning which requires the State coastal zone management agencies to study, develop, and implement management plans for addressing the adverse effects that sea level rise caused by global warming will have on coastal areas, that is, drinking water supplies, coastal infrastructures, ports, harbors, wetlands, residential areas and so forth.

Furthermore, the act strengthens the Federal consistency provisions of the CZMA by reversing the 1984 Supreme Court decision, Secretary of the Interior versus California. This section makes it clear that Congress, in passing the CZMA fully intended to create a partnership between the States and the Federal Government. Moreover, Congress intends for coastal States to once again play a major role in decisions which affect those States' coastal zone, such as offshore oil and gas leasing and drilling.

The legislation further sets up a regional coastal and ocean monitoring plan that will build upon and complement the existing National Status and Trends Program. The new monitoring program will assess the quality of the ocean and estuarine environments. In particular it will focus on pristine waters and degraded waters in order to assess if the clean waters are staying clean and determine if the polluted waters are improving or getting worse.

Finally the bill provides for increased public participation in the Federal review process by which States coastal zone management agencies are evaluated.

Mr. President, the extent of our coastal degradation goes far beyond the reaches of the current Clean Water Act and Coastal Zone Management Act, and to that end it is imperative that Congress develop resolutions and new approaches to combating this menacing problem. Old solutions will not do. The consequences of neglect and apathy toward this problem goes far beyond man's wildest imaginings of just a few years ago. We have learned so much about the havoc we are creating in our ocean. New approaches, education, enlightened lifestyles, and a willingness by all sectors to get involved will offer us some of the answers in what will be a pitched battle to prevent the horror stories that the signs of our coastal ecosystem are beginning to display.

If Congress does not enact new laws and strengthen existing ones, we will be responsible for perpetrating on of the most serious crimes ever carried out by one generation on those that follow—the destruction of our coastal environment.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD, as well as the attached summary.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1189

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SHORT TITLE

SECTION 1. This Act may be cited as the "Coastal Zone Improvement Act of 1989".

#### FINDINGS AND PURPOSE

SEC. 2. (a) Congress finds and declares the following:

(1) Our oceans, coastal waters, and estuaries constitute a unique resource. The condition of the water quality in and around the coastal areas is significantly declining. Growing human pressures on the coastal ecosystem will continue to degrade this resource until adequate actions and policies are implemented.

(2) 75 percent of the Nation's population will live within fifty miles of the United States coast by the year 2000, including the Great Lakes and nine out of ten of the largest urban areas are located along the coast-

line, thus placing greater demands on coastal resources.

(3) Marine resources contribute to the Nation's economic stability. Commercial and recreational fishery activities support an industry with an estimated value of \$12 billion a year.

(4) Wetlands play a vital role in sustaining the coastal economy and environment. Wetlands support and nourish fishery and marine resources. They also protect the Nation's shores from storm and wave damage. Coastal wetlands contribute an estimated \$5 billion to the production of fish and shellfish in the United States coastal waters. Yet, 50 percent of the Nation's coastal wetlands have been destroyed, and more are likely to decline in the near future.

(5) Non-point source pollution is increasingly recognized as a significant factor in coastal water degradation. In urban areas, storm water and combined sewer overflow are linked to major coastal problems, and in rural areas, run-off from agricultural activities may add to coastal pollution.

(6) Coastal planning and development control measures are essential to protect coastal water quality, which is subject to continued ongoing stresses. Currently, not enough is being done to manage and protect our coastal resources.

(7) Global warming results from the accumulation of man-made gases, released into the atmosphere from such activities as the burning of fossil fuels, leveling of forests, and the production of chlorofluorocarbons, which trap solar heat in the atmosphere and raise temperatures worldwide. Global warming could result in a one meter or more global sea level rise by 2050 resulting from ocean expansion, the melting of snow and ice, and the gradual melting of the polar ice cap. Sea level rise will result in the loss of natural resources such as beaches, dunes, estuaries, and wetlands, and will contribute to the salinization of drinking water supplies. Sea level rise will also result in damage to properties, infrastructures, and public works. There is a growing need to plan for sea level rise.

(8) There is a clear link between coastal water quality and land use activities along the shore. State management programs under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) are among the best tools for protecting coastal resources and must play a larger role, particularly in improving coastal zone water quality.

(b) It is the purpose of Congress in this Act to enhance the effectiveness of the Coastal Zone Management Act of 1972 by increasing our understanding of the coastal environment and expanding the ability of State coastal zone management programs to address coastal environmental problems.

#### OFFICE OF COASTAL ZONE MANAGEMENT

SEC. 3. (a)(1) There is established in the National Oceanic and Atmospheric Administration of the Department of Commerce an Office of Ocean and Coastal Zone Management (hereinafter referred to as the "Office"), which shall succeed the Office of Ocean and Coastal Resource Management within the National Oceanic and Atmospheric Administration.

(2) The head of the Office shall be the Assistant Administrator for Ocean and Coastal Zone Management, who shall be appointed by the Secretary of Commerce, subject to the approval of the President, and compensated at the rate prescribed for level V of the Executive Schedule pay rates.

(3) The Office shall have responsibility for—

(A) all functions exercised under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), as well as related laws dealing directly with coastal zone management, to the extent those functions are vested by law in the National Oceanic and Atmospheric Administration or its Administrator, or vested by law in the Department of Commerce or its Secretary and administered through the National Oceanic and Atmospheric Administration;

(B) all other functions under the responsibility of the Office of Ocean and Coastal Resource Management within the National Oceanic and Atmospheric Administration as of the date of enactment of this Act; and

(C) such functions as may be assigned by legislation.

(b) Section 5316 of title 5, United States Code, is amended by inserting "Ocean and" immediately before "Coastal Zone Management".

#### COASTAL ZONE WATER QUALITY IMPROVEMENT

SEC. 4. (a) Section 302 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451) is amended by adding at the end the following new subsection:

"(k) Land uses in the coastal zone, and the uses of adjacent lands which drain into the coastal zone, have direct and significant effects on the quality of coastal waters and habitats, and efforts to control coastal water pollution from land use activities must be improved."

(b) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)) is amended—

(1) by redesignating subparagraph (C) through (I) as subparagraphs (D) through (J); and

(2) by inserting immediately after subparagraph (B) the following new subparagraph:

"(C) the management of coastal development to improve, protect, and restore the quality of coastal waters, and to prevent the impairment of natural resources and existing uses of those waters;"

(c) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) is amended by inserting immediately after section 306A the following new section:

#### "COASTAL ZONE WATER QUALITY IMPROVEMENT"

SEC. 306B. (a) Within three years after the date of enactment of this section, the management agency designated under section 306(c)(5) for each coastal state for which the Secretary has approved a program pursuant to section 306, in consultation with the state water quality control agency, shall prepare an approvable Coastal Zone Water Quality Improvement Plan (hereafter in this section referred to as the "Plan") and the state shall submit the Plan to the Secretary.

"(b) The Plan shall—

"(1) identify all land and water uses and activities within coastal and estuarine waters and land areas, including coastal drainage areas, that individually or cumulatively may cause or contribute significantly to a violation of water quality standards or an impairment of resources or existing uses of coastal waters;

"(2) establish, renew, and revise on a continuing basis model ordinances, for adoption by state and local agencies and governments, which shall outline legal authority and best management practices to prevent or reduce pollution of coastal waters by land and water uses and shall include, at a minimum, (A) buffer strips, (B) setbacks, (C) density restrictions, (D) techniques and pro-

cedures for identifying, improving, and protecting critical coastal areas and habitats, (E) stormwater management practices, (F) sewage disposal practices, (G) soil erosion and sedimentation controls, and (H) siting and design criteria for water uses, including marinas;

"(3) encourage and assist local governments in implementing the ordinances established under paragraph (2) by—

"(A) providing specific goals and schedules for implementation by state and local agencies and governments;

"(B) providing technical assistance, financial incentives, and supporting demonstration projects to encourage implementation of model ordinances by state and local agencies and governments and innovative land management practices by landowners;

"(C) requiring the periodic review and evaluation of implementation activities and schedules; and

"(D) identifying staffing needs and educational programs to support implementation activities;

"(4) contain enforceable policies that will ensure the protection of the coastal waters of outstanding national significance designated in accordance with subsection (c) and the protection of the water quality, existing water uses, habitats, and living resources in those waters;

"(5) contain enforceable policies to reduce pollution in coastal waters in order to achieve applicable water quality standards, or to achieve a balanced, indigenous population of fish, shellfish, and wildlife and to provide for recreation on or in such waters;

"(6) specify the legal authority, regulations, best management practices, strategies or techniques, and other mechanisms to implement and enforce the policies referred to in paragraphs (4) and (5);

"(7) institute mechanisms to improve coordination between state agencies, and between state and local officials, responsible for land use planning and permitting, water quality permitting and enforcement, habitat protection, and public health and safety through the use of joint project reviews, interagency certifications, memoranda of agreements, executive orders, and other appropriate mechanisms;

"(8) modify the boundary of the state coastal zone in order to manage more effectively the uses and activities identified under subsection (b)(1), if, pursuant to subsection (g), it is determined that the boundary should be modified; and

"(9) institute mechanisms to coordinate the activities and decisions of state coastal management agencies under the Plan and state water quality control agencies with respect to land and water uses in areas outside the coastal zone but which may have significant impacts upon coastal water quality.

"(c) The Plan shall provide for the designation as coastal waters of outstanding national significance those coastal waters within a state with important ecological, recreational, or esthetic values, taking into account their fisheries, shellfish resources, their habitats, and their recreational uses. Such areas shall include, at a minimum, and the Plan shall initially designate, those coastal waters in or adjacent to—

"(1) national parks, wildlife refuges, estuarine reserves, recreational areas, and marine sanctuaries;

"(2) state parks, wildlife refuges, sanctuaries, and recreational areas; and

"(3) other coastal waters of ecological significance.

"(d)(1) The Plan shall provide for the identification of those coastal waters that cannot reasonably be expected to achieve or maintain any applicable water quality standards established under the Federal Water Pollution Control Act and that may be improved with respect to water quality through the adoption of policies governing coastal land and water uses and activities identified under subsection (b)(1). The Plan shall provide a priority ranking among such waters, shall initially identify those waters determined to be of the highest priority, and shall set forth a schedule to complete the identification of all coastal waters that may merit inclusion under this paragraph. In identifying such waters, the state agency designated under section 306(c)(5) shall consult with the state water quality control agency and other appropriate state agencies. A determination by the state water quality control agency regarding the status of a body of coastal waters with respect to the water quality standards established under the Federal Water Pollution Control Act shall be accepted by such designated state agency.

"(2) In the absence of water quality standards established under the Federal Water Pollution Control Act applicable to coastal waters, the Plan shall provide for the identification of those coastal waters that the Governor of each coastal state, or the state agency designated under section 306(c)(5), in consultation with the state water quality control agency and other appropriate state agencies, determines (A) cannot reasonably be expected to support a balanced, indigenous population of fish, shellfish, and wildlife and to provide for recreation in or on its waters, and (B) may be improved with respect to water quality through the adoption of policies governing coastal land and water uses and activities identified under subsection (b)(1). The Plan shall provide a priority ranking among such waters, shall initially identify those waters determined to be of the highest priority, and shall set forth a schedule to complete the identification of all coastal waters that may merit inclusion under this subparagraph.

"(e) The Plan shall provide for the preservation and protection of coastal waters that are not covered by subsections (c) or (d) by allowing the application of any of the policies developed pursuant to subsections (c) or (d) to such waters if the state agency designated under section 306(c)(5), in consultation with other appropriate state agencies, determines that such action is necessary to preserve or protect coastal waters.

"(f)(1) The Secretary shall review and approve or return each Plan submitted under this section within 180 days after the date of its submission by the state. The Secretary shall approve the Plan if the Secretary finds that the Plan meets the requirements of subsection (b) and does not violate other law and that the state provided notice and an opportunity for public comment in the course of Plan preparation. If the Secretary finds that a Plan does not meet the requirements of subsection (b), that it violates other law, or that such notice and opportunity for comment was not provided, the Secretary shall return it to the state with specific recommendations for modifying the Plan or for such notice and opportunity for comment. The state shall submit the modified Plan to the Secretary within 180 days after such return. The Secretary may not return or disapprove a Plan on the grounds that the Plan contains provisions that are more stringent than provided under Federal law.

"(2) Once the Secretary has approved a Plan under this subsection, the Plan shall be considered part of the state's approved management program for all purposes and no subsequent approval shall be required for its implementation, including the designation of coastal waters of outstanding national significance under subsection (c) and the identification of coastal waters under subsections (d) and (e). Any amendments to the Plan submitted after the Plan's approval under this section shall be deemed to be an amendment to the state program subject to the requirements of section 306(g).

"(3) Except as provided in paragraph (4), and in the event that adequate funds are appropriated to implement this section, the Secretary—

"(A) shall withdraw any financial assistance under this section, and

"(B) may reduce any financial assistance extended to such state under section 306 but not below 80 per centum of the amount that would otherwise be available to the state under such section for any year,

if the Secretary finds that the state has failed to submit an approvable Plan as required by subsection (a) or, as part of the Secretary's continuing review of the state program, that the state has failed to implement the Plan as approved.

"(4) If the Secretary finds that a state has made satisfactory progress in developing a Plan under subsection (a) and that additional time is required to complete necessary statutory or regulatory actions, the Secretary may authorize one additional year for the state or comply with this section.

"(5) Any funds withheld under paragraph (3) shall be reallocated by the Secretary among those states that are in compliance with this section.

"(g) In considering whether to modify the inland boundary of the coastal zone pursuant to subsection (b)(8), each state management program shall consult with appropriate state agencies and the Environmental Protection Agency to determine the need to extend the inland boundary of its coastal zone in order to manage more effectively the lands whose uses significantly affect coastal waters. The Plan shall contain a report examining inland boundary issues and justifying the decision to modify or to maintain the existing inland boundary. Approval of the Plan by the Secretary shall constitute approval of any inland boundary changes provided by the Plan.

"(h) The Secretary shall provide technical assistance to states and local governments in developing and implementing the Plans required by subsection (a), including—

"(1) provision of methods for assessing the water quality impacts associated with coastal land uses and activities;

"(2) provision of methods for assessing the cumulative water quality impacts of coastal development; and

"(3) assistance in the development and implementation of model ordinances in accordance with subsection (b)(3).

"(i) Each state agency designated under section 306(c)(5) shall conduct a continuing review of the uses and activities identified under the Plan for its state and certify those uses and activities that meet the requirements of the Plan. State and Federal agencies shall not permit such an identified use or activity unless it has been certified under this subsection.

"(j)(1) The Secretary shall promulgate, within 12 months after the date of enactment of this section, regulations governing the incorporation of conservation and man-

agement plans developed under section 320 of the Federal Water Pollution Control Act into state management programs approved under this Act. If a state agency designated under section 306(c)(5) certifies that such a conservation and management plan complies with the regulations promulgated under this subsection, it shall be deemed approved as part of the state's management program under section 306.

"(2) The state agency designated under section 306(c)(5) shall appoint a representative to participate in each management conference convened under section 320 of the Federal Water Pollution Control Act that includes coastal lands and waters of its state.

"(k) The Secretary shall make grants to each coastal state with an approved program to cover at least 80 per centum of the costs incurred by the coastal state in fulfilling the requirements of this section."

(d) Section 318 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1464) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting immediately after subsection (c) the following new subsection:

"(d) There are authorized to be appropriated to the Secretary such sums, not to exceed \$35,000,000 for each of the fiscal years occurring during the period beginning October 1, 1989, and ending September 30, 1994, as may be necessary for grants and other requirements under section 306B, to remain available until expended."

#### SEA LEVEL RISE AND LAND SUBSIDENCE

SEC. 5. (a) Section 302 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451), as amended by section 4, is further amended by adding at the end the following new subsection:

"(1) Global warming could result in a substantial sea level rise with serious adverse effects in the coastal zone and the states must anticipate and plan for such an occurrence."

(b) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)), as amended by section 4, is further amended by inserting "present and future" immediately after "full consideration to".

(c) Section 303(2)(B) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)(B)) is amended by striking "of subsidence" and inserting in lieu thereof the following: "likely to be affected by or vulnerable to sea level rise from global warming, land subsidence."

(d) Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)), as amended by section 4 and this section, is further amended—

(1) by striking "and" at the end of subparagraph (I), as so redesignated by section 4;

(2) by striking the semicolon in subparagraph (J), as so redesignated by section 4, and inserting in lieu thereof a comma; and

(3) by adding at the end the following new subparagraph:

"(K) the study, development, and implementation of management plans for addressing the adverse effects upon the coastal zone, of land subsidence and sea level rise caused by global warming, including adverse effects on coastal drinking water supplies, coastal infrastructures, ports and harbors, energy facilities, habitat and coastal wetlands, residential housing, storm surge protection, and the environment and economic

activity generally in the affected coastal areas; and".

(e) Section 303(3) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(3)) is amended by inserting "including those areas likely to be affected by land subsidence or sea level rise caused by global warming," immediately after "hazardous areas,".

(f)(1) Section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)) is amended by striking "coastal waters," and inserting in lieu thereof "coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to a one-meter sea level rise from global warming."

(2) Not later than 12 months after the date of enactment of this Act, coastal States with federally approved coastal zone management programs shall submit to the Secretary of Commerce amendments to their programs that take into account the provisions of paragraph (1) of this subsection.

#### COASTAL ZONE MANAGEMENT CONSISTENCY

SEC. 6. Section 307(c)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)(1)) is amended to read as follows:

"(c)(1) Each Federal agency activity within or outside the coastal zone that directly affects any land or water use or natural resource of the coastal zone or that may lead to such effects shall be carried out in a manner which is consistent to the maximum extent practicable with the approved state management programs. A Federal agency activity shall be subject to this paragraph unless it is subject to paragraph (2) or (3) of this subsection."

#### COASTAL ZONE MANAGEMENT REVIEW

SEC. 7. Subsection (b) of section 312 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1458) is amended to read as follows:

"(b) For the purpose of making the evaluation of a coastal state's performance, the Secretary shall provide full opportunity for public participation including holding public meetings and at least one public hearing in the state being evaluated, as well as providing opportunity for the submission of written and oral comments by the public. Each such evaluation shall be prepared in report form and shall include written responses to the comments received during the evaluation process. Copies of the evaluation shall be promptly provided to the state being evaluated and to all those who participated in the evaluation process."

#### REGIONAL COASTAL OCEAN MONITORING AND ASSESSMENT PROGRAM

SEC. 8. The National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 et seq.) is amended by adding at the end the following new section:

#### "SEC. 11. REGIONAL COASTAL OCEAN MONITORING AND ASSESSMENT PROGRAM.

"(a) REGIONAL COASTAL STRATEGY.—The Administrator, in consultation with the Director and other appropriate Federal officials having authority over ocean pollution, research, and monitoring programs, shall develop, as part of the Plan, a Regional Coastal Ocean Monitoring and Assessment Strategy. The Strategy shall be developed and submitted, along with appropriate recommendations for legislation or other Federal action in support of the Strategy, to the Committee on Commerce, Science, and Transportation of the Senate and the Merchant Marine and Fisheries Committee of the House of Representatives within 6 months after the date of enactment of this section.

"(b) REGIONAL COASTAL PROGRAM.—The Strategy shall define, and develop recommendations for implementing, a Regional Coastal Ocean Monitoring and Assessment Program which complements the existing National Status and Trends Program of the Administration. The Program shall provide for comprehensive monitoring and assessment of the quality of the coastal ocean and estuarine environment and resources.

"(c) FACTORS IN DEVELOPMENT OF STRATEGY.—In developing the Strategy, the Administrator shall—

"(1) identify the informational requirements necessary to protect and manage regional coastal and estuarine resources;

"(2) evaluate the information available through existing Federal, State, and local monitoring efforts;

"(3) determine what additional information is required and establish priorities for completing a comprehensive monitoring network;

"(4) define the data management requirements necessary to ensure that the data collected is readily accessible for protecting and managing regional coastal and estuarine resources;

"(5) describe an effective process that can be established for coordinating and administering the regional programs;

"(6) provide for national standardization of procedures and formats to be used in making measurements by regional programs; and

"(7) specify ways to ensure that regional measurements are compiled and integrated into the information system of the National Status and Trends Program of the Administration.

"(d) AUTHORIZATION.—There are authorized to be appropriated to the Administration for the purposes of carrying out this section not to exceed \$300,000."

#### SUMMARY OF THE COASTAL ZONE IMPROVEMENT ACT OF 1989

Section 1 gives the short title of the Act, and Section 2 lists the Congressional findings and purpose of the legislation.

Section 3 elevates the Office of Coastal Zone Management in the National Oceanic and Atmospheric Administration (NOAA) to full line office status, comparable to NOAA's fisheries, weather, research, and satellite programs. This elevation recognizes the increased importance Congress places on the coastal zone management program and raises the program to a level equal to that of NOAA's other major missions.

Section 4 amends the Coastal Zone Management Act to provide a stronger link between existing state water quality agencies and state coastal zone management agencies. Strengthening the relationship between these agencies will improve our ability to address land-based activities which degrade coastal waters.

The section calls for state coastal zone management agencies to implement an overall plan that preserves, restores, and protects coastal waters. By implementing the plan, coastal states will improve the management of land and water uses that affect coastal water quality and thereby reduce coastal pollution and preserve wetland and marine habitats. The plan will focus primarily on pristine and degraded waters, but will provide model ordinances for the management of all coastal waters. The section authorizes \$35 million annually for the development and implementation of state plans.

Section 5 will enable and encourage state coastal zone management programs to address the problems and impacts associated with sea level rise caused by global warming.

dress the problems and impacts associated with sea level rise caused by global warming.

Section 6 strengthens the Federal consistency provisions of the Coastal Zone Management Act by reversing the 1984 Supreme Court decision, *Secretary of the Interior v. California*. This section makes it clear that Congress, in passing the CZMA, fully intended to create a partnership between the states and the Federal government. Furthermore, Congress intends for coastal states to once again play a major role in decisions which affect those states' coastal zone.

Section 7 provides for increased public participation in the Federal review process by which state coastal zone management agencies are evaluated.

Section 8 calls for the NOAA Administrator and the President's Science Advisor to develop a regional coastal water quality monitoring program to complement the ongoing National Status and Trends Program. The new effort will be designed to focus on regional problems in order to assist environmental decision-makers. The program will provide nationwide monitoring standards and will ensure that regional information is integrated into the national monitoring system.

By Mr. PELL:

S. 1190. A bill to establish in the Department of Education and Office of Correctional Education, and for other purposes; to the Committee on Labor and Human Resources.

#### OFFICE OF CORRECTIONAL EDUCATION ACT

● Mr. PELL. Mr. President, I am pleased to introduce today a bill which would create within the Department of Education an office of correctional education.

The need for this legislation is long overdue. Of the approximately 700,000 people in correctional facilities today, at least one-third have serious drug problems; 80 percent of the adults have no high school diploma; and 75 percent are functionally illiterate. The number of people in prison has increased by more than three-quarters since 1980, and, sadly, this growth will most certainly accelerate in the years ahead. Clearly, we can no longer ignore the issue of educating the incarcerated as a route toward rehabilitation.

Ninety percent of the adults in prison will return to the community within the next 5 to 10 years, and nearly two-thirds of them will return to prison. The reason for this, in my mind, is the lack of focus on education and rehabilitation while an individual is incarcerated. They leave as they enter—without a marketable skill, or the ability to read or write—and they remain in the revolving door to prison.

As I have said many times before, it costs more to send a kid to jail than to Yale. This fact would not be so staggering if this money were used for rehabilitation, but regrettably, it is not.

My bill simply emphasizes that greater attention and organization must be given to the area of correctional education. Until we are commit-

ted to assisting prisoners by providing the tools which are necessary to survive in our world without the need to resort to crime, we as a society will continue to pay dearly. I view this legislation as an initial step toward that goal.

I ask unanimous consent that the text of the legislation be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 7190

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Office of Correctional Education Act of 1989".

#### SEC. 2. CORRECTIONAL EDUCATION.

Title II of the Department of Education Organization Act is amended by—

(1) redesignating sections 213 and 214 as sections 214 and 215, respectively; and

(2) inserting the following new section 213 after section 212:

##### "OFFICE OF CORRECTIONAL EDUCATION

"SEC. 213. (a) FINDINGS.—The Congress finds and declares that—

"(1) education is important to, and makes a significant contribution to, the adjustment of individuals in society; and

"(2) there is a growing need for immediate action by the Federal Government to assist State and local educational programs for criminal offenders in correctional institutions.

"(b) STATEMENT OF PURPOSE.—It is the purpose of this Act to encourage and support educational programs for criminal offenders in correctional institutions.

"(c) ESTABLISHMENT OF OFFICE.—The Secretary of Education shall establish within the Department of Education an Office of Correctional Education.

"(d) FUNCTIONS OF OFFICE.—The Secretary, through the Office of Correctional Education established under subsection (a) of this section, shall—

"(1) coordinate all correctional education programs within the Department of Education;

"(2) provide technical support to State and local educational agencies on correctional education and programs and curricula;

"(3) provide an annual report to the Congress on the progress of the Office of Correctional Education and the status of correctional education in the United States;

"(4) cooperate with other Federal agencies carrying out correctional education programs to ensure coordination of such program; and

"(5) advise the Secretary on correctional education policy.

"(e) DEFINITIONS.—As used in this section—

"(1) the term 'criminal offender' means any individual who is charged with or convicted of any criminal offense, including a youth offender or a juvenile offender;

"(2) the term 'correctional institution' means any—

"(A) prison,

"(B) jail,

"(C) reformatory,

"(D) work farm,

"(E) detention center, or

"(F) halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders;

"(3) the term 'Secretary' means the Secretary of Education;

"(4) the term 'State' means any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and

"(5) the term 'State educational agency' means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law."●

#### ADDITIONAL COSPONSORS

S. 82

At the request of Mr. THURMOND, the names of the Senator from Virginia [Mr. WARNER] and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of S. 82, a bill to recognize the organization known as the 82nd Airborne Division Association, Incorporated.

S. 232

At the request of Mr. MOYNIHAN, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 232, a bill to establish the American Conservation Corps, and for other purposes.

S. 335

At the request of Mr. MCCAIN, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 335, a bill to amend title XVIII of the Social Security Act and other provisions of law to delay for 1 year the effective dates of the supplemental Medicare premium and additional benefits under Part B of the Medicare Program, with the exception of the spousal impoverishment benefit.

S. 341

At the request of Mr. HOLLINGS, the names of the Senator from Michigan [Mr. RIEGLE] and the Senator from Oregon [Mr. HATFIELD] were added as cosponsors of S. 341, a bill to amend the Federal Aviation Act of 1958 to prohibit discrimination against blind individuals in air travel.

S. 454

At the request of Mr. ROCKEFELLER, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 454, a bill to provide additional funding for the Appalachian development highway system.

S. 455

At the request of Mr. ROCKEFELLER, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 455, a bill to extend the Appalachian Regional Development Act of 1965 and to provide authorizations for the Appalachian Highway and Appalachian Area Development Programs.

S. 464

At the request of Mr. SANFORD, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 464, a bill to promote safety and health in workplaces owned, operated or under contract with the United States by clarifying the United States' obligation to observe occupational safety and health standards and clarifying the United States' responsibility for harm caused by its negligence at any workplace owned by, operated by, or under contract with the United States.

S. 488

At the request of Mr. FOWLER, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 488, a bill to provide Federal assistance and leadership to a program of research, development, and demonstration of renewable energy and energy efficiency technologies, and for other purposes.

S. 513

At the request of Ms. MIKULSKI, the names of the Senator from New York [Mr. MOYNIHAN], the Senator from New York [Mr. D'AMATO], the Senator from Washington [Mr. ADAMS], the Senator from Virginia [Mr. WARNER], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Indiana [Mr. COATS], the Senator from Oklahoma [Mr. BOREN], the Senator from Hawaii [Mr. INOUE], the Senator from Hawaii [Mr. MATSUNAGA], and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of S. 513, a bill to amend chapters 83 and 84 of title 5, United States Code, to extend certain retirement provisions of such chapters which are applicable to law enforcement officers to inspectors of the Immigration and Naturalization Service, inspectors and canine enforcement officers of the U.S. Customs Service, and revenue officers of the Internal Revenue Service.

S. 620

At the request of Mr. STEVENS, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 620, a bill for the relief of Leroy W. Shebal of North Pole, AK.

S. 640

At the request of Mrs. KASSEBAUM, the name of the Senator from Idaho [Mr. MCCLURE] was added as a cosponsor of S. 640, a bill to regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents.

S. 659

At the request of Mr. SYMMS, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 659, a bill to repeal the estate tax inclusion related to valuation freezes.

S. 691

At the request of Mr. LAUTENBERG, the name of the Senator from Kentucky [Mr. McCONNELL] was added as a cosponsor of S. 691, a bill to require certain information in the National Driver Register to be made available in connection with an application for a license to be in control and direction of a commercial vessel.

S. 771

At the request of Mr. REID, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 771, a bill to amend the Internal Revenue Code of 1986 to disallow deductions for costs in connection with oil and hazardous substances cleanup unless the requirements of all applicable Federal laws concerning such cleanup are met, and for other purposes.

S. 804

At the request of Mr. MITCHELL, the name of the Senator from Delaware [Mr. ROTH] was added as a cosponsor of S. 804, a bill to conserve North American wetland ecosystems and waterfowl and the other migratory birds and fish and wildlife that depend upon such habitats.

S. 828

At the request of Mr. DOMENICI, the names of the Senator from Mississippi [Mr. LOTT] and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 828, a bill to amend the Internal Revenue Code of 1986 to provide incentives for the removal of crude oil and natural gas through enhanced oil recovery techniques so as to add as much as 10 billion barrels to the U.S. reserve base, to extend the production of certain stripper oil and gas wells, and for other purposes.

S. 1115

At the request of Mr. EXON, the names of the Senator from Iowa [Mr. HARKIN], the Senator from Kentucky [Mr. FORD], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Arizona [Mr. DeCONCINI] were added as cosponsors of S. 1115, a bill to amend the Rural Electrification Act of 1936 to permit the prepayment and refinancing of Federal Financing Bank loans made to rural electrification and telephone systems, and for other purposes.

S. 1162

At the request of Mr. KOHL, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 1162, a bill to amend the Congressional Budget Act of 1974 to require the Committees on the Budget to adopt the economic and technical assumptions of the Congressional Budget Office in preparing the concurrent resolution on the budget for a fiscal year.

Mr. KOHL. Mr. President, yesterday I introduced S. 1162, a bill requiring Congress to use CBO economic as-

sumptions during its budget debate. As I noted in my statement, Senators CONRAD and ROBB joined me as original cosponsors of the bill. Senator ROBB, as my colleagues are aware, has been a leader on the Budget Committee and here on the floor for this kind of legislation.

Through some oversight, Senator ROBB's name was not included as a cosponsor. I would like to apologize for that mistake. He has been involved with this proposal from the ground floor and should have been recognized as an original cosponsor.

Mr. President, I ask unanimous consent that Senator ROBB be added as a cosponsor of S. 1162.

## SENATE JOINT RESOLUTION 10

At the request of Mr. THURMOND, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of Senate Joint Resolution 10, a joint resolution to designate the month of May 1989 as "National Foster Care Month."

## SENATE JOINT RESOLUTION 15

At the request of Mr. PRESSLER, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of Senate Joint Resolution 15, a joint resolution to designate the second Sunday in October of 1989 as "National Children's Day."

## SENATE JOINT RESOLUTION 19

At the request of Mr. BURNS, the names of the Senator from Delaware [Mr. ROTH], the Senator from Utah [Mr. GARN], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Idaho [Mr. SYMMS], the Senator from Kentucky [Mr. McCONNELL], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Alaska [Mr. STEVENS], the Senator from Mississippi [Mr. COCHRAN], the Senator from Mississippi [Mr. LOTT], the Senator from New Mexico [Mr. DOMENICI], the Senator from Florida [Mr. MACK], the Senator from New Hampshire [Mr. RUDMAN], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Indiana [Mr. COATS], the Senator from Missouri [Mr. BOND], the Senator from South Dakota [Mr. PRESSLER], the Senator from Wisconsin [Mr. KASTEN], the Senator from Idaho [Mr. McCURE], the Senator from Texas [Mr. GRAMM], the Senator from Kansas [Mr. DOLE], the Senator from Oklahoma [Mr. NICKLES], the Senator from Missouri [Mr. DANFORTH], the Senator from Colorado [Mr. ARMSTRONG], the Senator from Maine [Mr. COHEN], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Colorado [Mr. WIRTH], the Senator from Tennessee [Mr. SASSER], the Senator from Delaware [Mr. BIDEN], the Senator from Louisiana [Mr. JOHNSTON], the Senator from North Dakota [Mr. CONRAD], the Senator from Oklahoma [Mr. BOREN], the Senator from South Dakota [Mr. DASCHLE], the Sen-

ator from Michigan [Mr. RIEGLE], the Senator from Arkansas [Mr. BUMBERS], the Senator from North Dakota [Mr. BURDICK], the Senator from Louisiana [Mr. BREAUX], the Senator from Hawaii [Mr. INOUE], the Senator from Alabama [Mr. HEFLIN], the Senator from Nebraska [Mr. KERREY], the Senator from Connecticut [Mr. DODD], the Senator from Nevada [Mr. REID], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Illinois [Mr. DIXON], the Senator from Illinois [Mr. SIMON], the Senator from North Carolina [Mr. SANFORD], the Senator from Alabama [Mr. SHELBY], the Senator from Georgia [Mr. FOWLER], the Senator from Nevada [Mr. BRYAN], the Senator from Georgia [Mr. NUNN], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of Senate Joint Resolution 19, a joint resolution to designate November 8, 1989, as "Montana Centennial Day."

## SENATE JOINT RESOLUTION 55

At the request of Mr. SIMON, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of Senate Joint Resolution 55, a joint resolution to designate the week of October 1, 1989, through October 7, 1989, as "Mental Illness Awareness Week."

## SENATE JOINT RESOLUTION 86

At the request of Mr. RIEGLE, the names of the Senator from Florida [Mr. GRAHAM], the Senator from New Mexico [Mr. DOMENICI], the Senator from Oregon [Mr. HATFIELD], and the Senator from Idaho [Mr. McCURE] were added as cosponsors of Senate Joint Resolution 86, a joint resolution designating November 17, 1989, as "National Philanthropy Day."

## SENATE JOINT RESOLUTION 127

At the request of Mr. SIMON, the names of the Senator from New Hampshire [Mr. HUMPHREY], the Senator from Nevada [Mr. REID], the Senator from Colorado [Mr. WIRTH], the Senator from Delaware [Mr. ROTH], the Senator from Wyoming [Mr. SIMPSON], the Senator from Texas [Mr. GRAMM], and the Senator from Georgia [Mr. NUNN] were added as cosponsors of Senate Joint Resolution 127, a joint resolution designating Labor Day weekend, September 2-4, 1989, as "National Drive for Life Weekend."

## SENATE JOINT RESOLUTION 137

At the request of Mr. KASTEN, the names of the Senator from Nevada [Mr. BRYAN] and the Senator from Wyoming [Mr. SIMPSON] were added as cosponsors of Senate Joint Resolution 137, a joint resolution designating January 7, 1990, through January 13, 1990, as "National Law Enforcement Training Week."

# SENATE CONCURRENT RESOLUTION 44—REGARDING THE FUNERAL OF IMRE NAGY, FORMER PRIME MINISTER OF HUNGARY

Mr. DODD (for himself, Mr. DOLE, and Mr. KENNEDY) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 44

Whereas on October 23, 1956, students, workers, and other citizens of Budapest, Hungary, united in a peaceful demonstration to express the desire of the Hungarian people for independence and freedom;

Whereas after security forces fired on the crowd, the demonstration turned into an uprising and freedom fight;

Whereas days of heroic fighting by the people of Hungary led to a temporary cease-fire and the formation of an interim government based on the consent of the people and led by Prime Minister Imre Nagy;

Whereas the short-lived government of Imre Nagy started the first steps toward a free and independent Hungary with a multi-party system based on the idea of popular sovereignty;

Whereas on November 4, 1956, an overwhelming Soviet force entered Hungary and in fierce, bloody fighting suppressed the revolution and restored Soviet domination over Hungary;

Whereas in the course of such fighting thousands of freedom-loving Hungarians lost their lives;

Whereas Prime Minister Imre Nagy and his close associates were taken into Soviet custody, and later tried and executed under false charges;

Whereas brutal and bloody retribution followed the extinction of the Hungarian revolution, and hundreds of ordinary freedom fighters were executed in addition to the top leaders of such revolution;

Whereas the present Government of Hungary has announced a radical reform of the entire political and economic system of the country;

Whereas the stated aim of such reforms is the establishment of a free and independent Hungary, with a pluralistic, multiparty political system where human rights will be respected;

Whereas the Hungarian Government has identified the secret burial sites of the executed revolutionaries of 1956, and allows their exhumation and proper public interment;

Whereas on June 16, 1989, in a public, televised funeral, the remains of Prime Minister Imre Nagy and four of his closest associates, as well as a casket representing all of the other executed victims, will be buried in Budapest with full dignity;

Whereas the Government of Hungary has announced its intention to declare the innocence of Imre Nagy and his associates;

Whereas the current Prime Minister of Hungary, the Speaker of the Parliament, and other officials of the Hungarian Government expressed an intent to attend the funeral;

Whereas hundreds of American citizens, who are former Hungarian freedom fighters, are traveling to Budapest to attend the funeral ceremonies and pay respect to the heroes of 1956;

Whereas the Hungarian revolution of 1956 was a watershed event in modern history and represented the first major sign of the inevitability of the destruction of Stalinism; and

Whereas it is the view of the people and the Government of the United States that the cause of human freedom is universal and that the Hungarian freedom fighters fought and died for the liberty of mankind: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring), That—*

(1) it is the sense of the Congress that the funeral of Imre Nagy and other heroes of the Hungarian revolution of 1956 is a significant symbol of reconciliation and reform in Hungary; and should give further strength to the forces of democracy and pluralism in Hungary;

(2) Congress expresses sincere respect for the memory of Imre Nagy and all of the martyrs of the Hungarian revolution of 1956; and

(3) the Secretary of the Senate is authorized and requested to send a copy of this concurrent resolution to the Government of Hungary.

## AMENDMENTS SUBMITTED

### NATURAL GAS DECONTROL ACT OF 1989

#### BRADLEY AMENDMENT NO. 195

Mr. BRADLEY proposed an amendment to the bill (H.R. 1722) to amend the Natural Gas Policy Act of 1978 to eliminate wellhead price and nonprice controls on the first sale of natural gas, and make technical and conforming amendments to such Act, as follows:

Insert the following at the appropriate place:

Section .

The Federal Energy Regulatory Commission may require, by rule or order, any interstate pipeline to transport natural gas. Such rules or orders may be issued under both the Natural Gas Policy Act and the Natural Gas Act.

## NOTICES OF HEARINGS

### SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

Mr. PRYOR. Mr. President, I would like to announce that the Subcommittee on Federal Services, Post Office, and Civil Service, of the Committee on Governmental Affairs, will hold a hearing on Friday, June 16, 1989. The focus of the hearing will be to examine policy issues regarding operational testing, as well as contracting practices. The subcommittee will hear witnesses from the Office of Test and Evaluation, the General Accounting Office, and the Office of the Inspector General, Department of Defense.

The hearing is scheduled for 9:30 a.m., in room 628 of the Senate Dirksen Office Building. For further information please contact Ed Gleiman, subcommittee staff director, on 224-2254.

Mr. President, I would like to announce that the Subcommittee on Federal Services, Post Office, and Civil Service, of the Committee on Govern-

mental Affairs, will hold a hearing on Monday, June 19, 1989. The focus of the hearing will be to examine Federal recruitment policies and practices. The subcommittee will hear witnesses from the Office of Personnel Management, the General Accounting Office, the National Commission on the Public Service, the General Services Administration, the Department of the Air Force, and various employee groups.

The hearing is scheduled for 10 a.m. in room 342 of the Senate Dirksen Office Building. For further information please contact Ed Gleiman, subcommittee staff director, on 224-2254.

### SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a Confirmation Hearing on Tuesday, June 20, 1989, beginning at 11 a.m., in 485 Russell Senate Office Building to confirm Dr. Eddie Brown as the Assistant Secretary for Indian Affairs, Department of the Interior.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

## AUTHORITY FOR COMMITTEES TO MEET

### COMMITTEE ON FINANCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on June 14, 1989, at 11 a.m. to hold a hearing on Super 301 and Special 301, the fourth in a series of hearings on oversight of the Omnibus Trade and Competitiveness Act of 1988.

The PRESIDING OFFICER. Without objection, it is so ordered.

### SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Energy Research and Development of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate June 14, 1989, 2 p.m. for a hearing to receive testimony on the Department of Energy's role in the area of magnetic fusion and inertial confinement fusion research and development and demonstration; the Department of Energy's fiscal year 1990 budget request for the Office of Fusion Energy; and on the relevant provisions of S. 964, a bill to authorize appropriations to the Department of Energy for civilian energy programs for fiscal years 1990 and 1991.

The PRESIDING OFFICER. Without objection, it is so ordered.

### COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation, be authorized to meet

during the session of the Senate on June 14, 1989, at 2:30 p.m. to hold a hearing on the nomination of James B. Busey, of Illinois, to be Administrator of the Federal Aviation Administration and on S. 1077, legislation to allow Mr. Busey to retain his military commission while serving in this position.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SUBCOMMITTEE ON COMMUNICATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Communications Subcommittee, of the Committee on Commerce, Science, and Transportation, be authorized to meet during the session of the Senate on June 14, 1989, at 9 a.m. to hold a hearing on media ownership: Diversity and concentration which will focus on the media and its ownership patterns.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SUBCOMMITTEE ON STRATEGIC FORCES AND NUCLEAR DETERRENCE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Strategic Forces and Nuclear Deterrence of the Committee on Armed Services be authorized to meet on Wednesday, June 14, 1989, at 9:30 a.m. in closed/open session to receive testimony on NATO nuclear deterrence in review of S. 1095, the Department of Defense authorization bill for fiscal years 1990-91.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### COMMITTEE ON ARMED SERVICES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Wednesday, June 14, 1989, at 2 p.m. in open session to receive testimony on the balanced technology initiative and international armaments cooperation in review of S. 1085, the Department of Defense authorization bill for fiscal years 1990-91.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SUBCOMMITTEE ON SECURITIES

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Securities of the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate Wednesday, June 14, 1989, at 9:30 a.m., to conduct hearings on the globalization of securities markets, and S. 646, the International Securities Enforcement Cooperation Act of 1989.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### COMMITTEE ON RULES AND ADMINISTRATION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, June 14, 1989, at 10:30 a.m., to hold a hearing

to receive testimony from individuals and organizations on their views on Congressional campaign finance legislation—Senate bills 7, 56, 137, 242, 330, 332, 359, and 597.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### COMMITTEE ON VETERANS' AFFAIRS

Mr. MITCHELL. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a hearing on mental health and health-facility-security legislation an oversight (part A of title II and section 221 of S. 13, S. 86, S. 192, S. 405, S. 846, and amendment No. 124 (to S. 13) on Wednesday, June 14, 1989, at 9 a.m. in SR-418.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SUBCOMMITTEE ON NUTRITION AND INVESTIGATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Subcommittee on Nutrition and Investigations of the Committee on Agriculture, Nutrition, and Forestry, be authorized to meet during the session of the Senate on Wednesday, June 14, 1989, at 2 p.m. to hold a hearing on the reauthorization of the Child Nutrition Programs and the Special Supplemental Food Program on WIC.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Wednesday, June 14, 1989, at 9 a.m. in S.R. 332 to mark up S. 1036, the Rural Partnerships Act of 1989.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### COMMITTEE ON FOREIGN RELATIONS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, June 14, at 2 p.m. to hold a business meeting to mark up foreign assistance legislation for fiscal year 1990 and to vote on pending nominations and legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### COMMITTEE ON FOREIGN RELATIONS—AGENDA

(Revised Markup and Vote, Foreign Assistance Authorization Legislation for Fiscal Year 1990, Wednesday, June 14, 1989, 2 p.m.)

When a voting quorum is present during this markup, the Committee will consider and vote on the following business items:

#### I. LEGISLATION

S. Con. Res. 42, expressing the sense of the Congress concerning the funeral of Imre Nagy, the former Prime Minister of Hungary, and other heroes of the 1956 revolution in Hungary.

#### II. NOMINATIONS

(1) Mr. Thomas Michael Tolliver Niles, of the District of Columbia, to be the U.S. Representative to the European Communities, with the rank and status of Ambassador.

(2) Mr. Joseph Zappala,\* of Florida, to be Ambassador to Spain.

(3) Mr. Morton I. Abramowitz, of the District of Columbia, to be Ambassador to Turkey.

(4) Mr. Edward N. Ney, of New York, to be Ambassador to Canada.

(5) Mr. C. Howard Wilkins, Jr., of Kansas, to be Ambassador to the Kingdom of the Netherlands.

(6) Mr. Richard H. Solomon, of the District of Columbia, to be an Assistant Secretary of State for East Asia and Pacific Affairs.

(7) Ms. Della M. Newman,\* of Washington, to be Ambassador to New Zealand and to serve concurrently as Ambassador to Western Samoa.

(8) Mr. Robert D. Orr, of Indiana, to be Ambassador to the Republic of Singapore.

(9) Mr. Melvin F. Sembler, of Florida, to be Ambassador to Australia and to serve concurrently as Ambassador to the Republic of Nauru.

(10) Mr. Melvyn Levitsky, of Maryland, to be Assistant Secretary of State for International Narcotics Matters.

(11) Ms. Jewel S. Lafontant, of Illinois, to be U.S. Coordinator for Refugee Affairs and Ambassador-at-Large while serving in this position.

(12) Mr. E. Patrick Coady, of Virginia, to be U.S. Executive Director of the International Bank for Reconstruction and Development for a term of two years.

\*These nominees are provisionally included on the agenda assuming that inconsistencies between the OGE report and the Committee questionnaire relative to political contributions are clarified prior to June 14.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ADDITIONAL STATEMENTS

#### FLAG DAY

● Mr. BOREN. Mr. President, June 14 marks a historical day for our country. Today, we celebrate Flag Day 1989. We should let this day stand as a reminder which exemplifies what our flag symbolizes: red and white stripes, 13 in number, representing the Original 13 Colonies, and 50 stars on a field of blue to represent the 50 States that comprise our great Nation.

The colors of our flag bring to mind over 200 years of sacrifice and heroism that American service men and women have accounted for to ensure that we maintain the most prominent system of government our world has ever seen, democracy. The flag is a symbol of national unity and quiet patriotism representing the many factions of our society: teachers, doctors, farmers, lawyers, factory workers, and businessmen; all bound by the common thread of our proud citizenship.

As Maj. Gen. Arthur MacArthur once stated, "The flag of the American

Union is a visible symbol of the ideal aspirations of the American people. It is the one focus in which all unite in reverential devotion."

Being an executive committee member for the U.S. Capitol Historical Society, I stand here today in recognition not only of the flag, but also in recognition of the Historical Society. Founded in 1962, the society has undertaken research and committed itself to in-depth studies of our Capitol and of Congress. The major drive of the society is to stimulate an increased sense of patriotism across the land. An example of their work is a 40-page booklet containing eight full pages of color illustrations on the U.S. flag and State flags, seals, and mottoes. It was recently published for Flag Day and inspired by the National Flag Day Foundation in Baltimore. The book is a valuable educational tool to help children learn about State symbols and their traditions. It will also serve as a resource of information to many patriotic Americans. I encourage my colleagues, interest in the society and wish to express my appreciation for their hard work and dedication shown to our Nation.

In classrooms today, future leaders study the tragedies endured by millions that enabled us to enjoy the system of government we presently see others so desperately striving to obtain. The broad stripes and bright stars of Old Glory help enable us to realize the blessings of democracy.●

#### CLOSED CAPTIONED BROADCASTING OF FLOOR PROCEEDINGS

● Mr. D'AMATO. Mr. President, I rise today as a cosponsor of Senate Resolution 13 which would amend Senate rules to require the closed captioned broadcasting of floor proceedings for the hearing impaired. I commend my colleagues, Senators DOLE, MITCHELL, MCCAIN, and HARKIN, for introducing this important resolution. It is essential that we take the necessary steps to offer hearing impaired persons full access to live coverage of Senate floor proceedings.

There are over 20 million hearing impaired individuals in America who, despite the availability of real-time—instantaneous—captioning since 1982, are still denied access to the daily proceedings of the U.S. Senate. Given the current level of captioning technology, there is absolutely no reason for this situation to continue.

Virtually every major organization representing the hearing impaired has recognized that the provision of captioned service would make for a more informed and active citizenry. Supporting this view, the Commission on Education of the Deaf has strongly recommended that congressional proceedings be captioned. Clearly, individ-

uals with hearing impairments are entitled, as citizens and as taxpayers, to witness the floor actions of their elected representatives.

Currently, the three major networks use real-time captioning for news broadcasts, Presidential speeches, press conferences, and various public affairs programs. The application of this service to Senate floor proceedings would give us an invaluable opportunity to serve our hearing impaired constituents in a practical and feasible manner. I therefore encourage my colleagues to join me in support of Senate Resolution 13, and I urge its immediate passage.●

#### TONY SPINA

● Mr. LEVIN. Mr. President, long after most words of journalism fade from our memories, the photographs that illuminate the prose remain. Often the best of these images stand alone to evoke the events of our time in a language that is unique to each of us.

For more than 40 years Tony Spina has displayed this eloquence on the pages of the Detroit Free Press and in newspapers across the country. He leaves his post as chief photographer of the Free Press this month to concentrate on his widely respected photography column and special photo projects.

Tony's dedication to the craft—what he has called the challenge of taking pictures that communicate—has earned him more than 450 national and international awards, including the highest honor of the National Press Photographers' Association. From the Detroit Institute of Arts to the Vatican, Tony's eye and technique have been celebrated in more than 80 one-man shows.

Words cannot do justice to pictures, but this man who has brought us so close over the years to Popes and Presidents and peasant children wrote once that his pictures should be measured in how clearly and how well they tell the story. And thousands of people whom you will never see or never meet will decide that.

Fortunately, thousands more each year will get a chance to decide for themselves, because the photographs of Tony Spina will always be with us.●

#### COASTAL PROTECTION ACT AND THE COMPREHENSIVE OCEAN ASSESSMENT AND STRATEGY ACT

● Mr. D'AMATO. Mr. President, I rise as an original cosponsor of the two coastal protection bills being introduced today by the distinguished majority leader and the Senator from New Jersey. I would like to commend them both for their leadership in protecting our precious marine resources.

As millions of Americans flock to the seashore this summer they are expecting to find that their beaches are no longer under siege from syringes, sewage, and garbage as they were last year. Memories of numerous beach closings last summer cling freshly in their minds.

The impacts of beach closings were quite significant in New York, especially on Long Island. New York State officials reported that attendance at Jones Beach State Park was off 50 percent from 1987 and off 45 percent at Robert Moses State Park. Many businesses on the island's south shore reported that their profits were off 60 percent over 1987. Many on the island continue to fear that real estate values in seaside communities will drop and that the positive economic development that has taken place in these areas will decline.

One thing is certain as the 1989 beach season begins, the events of last summer must be avoided.

The Coastal Protection Act and the Comprehensive Ocean Assessment and Strategy [COAST] Act are multifaceted approaches to preventing further degradation of our coastal waters and for cleaning up existing pollution.

First and foremost, both bills require the EPA to conduct an overall assessment of coastal waters and to designate those areas experiencing severe degradation. The EPA must then work with the States to develop management conferences to deal with the polluted areas. The EPA Administrator would be given special authority to require more stringent requirements for discharge permits, wetlands assessments, stormwater discharges, and nonpoint pollution control.

In response to washups last summer, the New York State Department of Environmental Conservation conducted an investigation into the causes. The report, which was released in December, identified five significant sources of washups: the fresh kills landfill in New York City, Marine garbage transfer stations, raw sewage discharges, stormwater runoff, and combined sewer overflow [CSO].

The legislation that is being introduced today addresses many of these sources of pollution. Both will restrict point source discharges into coastal waters, establish a national coastal registry to provide information to eliminate nonpoint source pollution, and require States to complete an inventory of combined sewers and assess the potential for eliminating the discharges.

Combined sewers are regarded by many to be a major source of pollution in coastal areas. Senator MOYNIHAN and I recently wrote to the Acting Administrator in EPA's region 2 office requesting that he report back to us on what the EPA was doing in conjunc-

tion with New York City to combat the CSO problem. The EPA reported that, among other efforts, the city is engaged in a long-term strategy to construct various treatment facilities which are not combined sewers. This particular program is expected to cost \$1.5 billion over the next 10 years.

The 1988 Needs Survey, issued by the EPA, states that \$16.4 billion is needed to correct the CSO problem nationwide. The need for New York City alone is \$5 billion. The survey further states that complete implementation of long-term programs is expected to take 20 years.

The legislation being introduced today takes a tough approach to a very serious problem. The quality of life in our coastal areas is so dependent upon our marine resources. We must act now to protect them from further degradation before we lose this most precious and valuable resource.●

#### VERY SPECIAL ARTS JOINS FORCES WITH VARIETY CLUBS INTERNATIONAL

● Mr. HARKIN. Mr. President, I rise today to inform my colleagues about a unique collaboration between two service organizations which benefit children with disabilities in all 50 States and around the world. Very Special Arts, an international organization established to provide educational programs for mentally and physically challenged individuals of all ages, and Variety Clubs International, a charitable organization which supports programs for sick and disabled children in every corner of the globe, have structured a joint program aimed at achieving their mutual objectives. It is the kind of public-private sector partnership which will encourage volunteerism and supplement limited Federal dollars to expand vital services.

It is particularly fitting that this agreement be announced today, during Very Special Arts very first International Festival. Throughout this week in the Nation's Capital, delegates representing 50 States and 58 foreign nations are arriving in Washington, DC, to take part in a celebration of their artistic accomplishments. They will be joined by educators, Government officials, master artists, celebrity performers, and the Washington community in performances, exhibits, symposia, and workshops in venues throughout the city. The John F. Kennedy Center for the Performing Arts will be the focal point for many of these activities. An invitation from the White House will bring these 1,000 participants to the South Lawn to share their talents with the President and Mrs. Bush. This week of festivities will culminate with a televised performance in the Kennedy Center Concert

Hall, where very special artists will share the stage with well-known entertainers from the realm of dance, drama, music, and the visual arts.

My interest in and support for this collaborative effort is twofold. First, as chairman of the Subcommittee on the Handicapped I know the importance of coordinated efforts between organizations serving the general community and those serving individuals with special needs. Variety Clubs of Iowa have lent financial support to charities in every county in the State, charities ranging from public and private hospitals, to youth emergency service centers, and comprehensive treatment centers for abused children. Similarly, Very Special Arts-Iowa has brought art education opportunities to preschool centers, elementary schools, nursing homes, and residential care facilities in major cities such as Des Moines as well as small, rural communities. Cooperative programming, volunteering, and fund-raising efforts between these two organizations in Iowa and elsewhere can only result in enhanced opportunities for children and young people with disabilities. Because both Variety Clubs International and Very Special Arts are already well-established in the United States and throughout the world, the benefits of this joint venture will touch the lives of millions of children of all ages.

For over 60 years, Variety Clubs, a charitable organization of volunteers, has been aiding handicapped and underprivileged children regardless of race, creed, or color. Fifty-two clubs consisting of 15,000 members exist worldwide. Since its beginnings in 1927, the Variety Clubs have raised over \$500 million.

The Variety Clubs build and provide hospitals, clinics, medical treatment, intensive care and pre-natal rehabilitation centers, schools, day care centers, parks, playgrounds, pools, and boys and girls clubs for underprivileged and handicapped children. By providing food, clothing, shelter, medical treatment, education, and child care, the Variety Clubs help disadvantaged children in the Third World through their "Life Patron Program."

Another program, "The Variety Children's Lifeline," cares for needy children by treating life-threatening medical problems. All treatment is performed without charge. Neither the child nor the parents have to pay.

"The Sunshine Coach Program" helps children who are normally confined to hospital beds to go outdoors and participate in recreational activity. Specially trained coaches are assigned to the children, and along with specially equipped vehicles allow these children to experience outdoor recreation and to enjoy more fully what life has to offer them.

Boys and girls clubs for needy and disadvantaged youngsters help chan-

nel the children's youthful energy in a fun and productive way.

As a result of great technological advances and the miracles of modern medicine, "Variety Limb Banks" provide electric elbows, powered hands, braces, and many other devices to help otherwise incapacitated children become mobile, independent, and able to care for themselves.

I am particularly proud to say that the Variety Clubs from my home State of Iowa consistently ranks as one of the top local clubs in the world. The Iowa Variety Clubs is annually nominated for Variety International's Heart Award. In 1979, they won it. Last year, Iowa Variety Clubs distributed \$1.4 million, and as a result, 80,000 Iowa children benefited. Iowa Variety Clubs is composed entirely of volunteers, and all the money raised in Iowa stays in Iowa.

Similarly, Very Special Arts programs serve over a million students, educators, parents and volunteers through workshops, performances and in-service training programs. Located in 50 States and in nations on every continent, Very Special Arts has enabled people of all ages with disabilities to experience the joy and beauty that dance, theater, music and painting bring to the human spirit. Most importantly, the arts provide a non-competitive opportunity for people of all ages and abilities to enter the mainstream of society.

The agreement announced by Variety Clubs International and Very Special Arts at its International Festival delineates the State and local partnerships which will be developed in the areas of programming, awareness and fundraising across the Nation and worldwide. For example, Variety Clubs well-established network of volunteers will work with Very Special Arts to enhance and expand their signature arts festival programs. Similarly, Very Special Arts will assist Variety Clubs in developing Artists Unlimited projects at the countless hospitals that benefit from their generous donations.

Very Special Art's mission is to assure that individuals with disabilities have the opportunity to add value to their lives through the arts, and to provide avenues for people with disabilities to be mainstreamed into the cultural life of their communities. Variety Clubs International see their mission as helping children around the world have a better chance at life. This newly announced partnership will take both organizations closer to the realization of these goals.

For the past 8 years Very Special Arts has received funding through chapter 2 of the Education Consolidation and Improvement Act. The success of Very Special Arts Iowa has convinced this Senator of the importance of that Federal contribution to arts

programming for individuals with mental and physical challenges.

Once again, I heartily commend the fine work that Variety Clubs and Very Special Arts are doing in Iowa and throughout the world, and I strongly encourage people to participate in such a worthwhile effort. It gives you a great feeling of pride and joy to see the happiness in the children's eyes that you helped put there.●

#### ENHANCED RESCISSION AUTHORITY

● Mr. HUMPHREY. Mr. President, on January 25, 1989, I introduced legislation which would provide for expedited consideration of Presidential rescission requests. It simply requires Congress to go on record as either approving or disapproving—by a simple majority vote—rescissions when they are requested.

Numerous Senators have expressed interest in the "enhanced rescission" concept. Senators ARMSTRONG, ROTH, McCAIN, and DIXON have introduced enhanced rescission proposals. Senator ARMSTRONG's proposal has been around for about a decade. I am convinced that the time is ripe for enactment of some form of enhanced rescission legislation.

Mr. President, I would like to share with my colleagues some expression of support for enhanced rescission which I have received. I ask that following these remarks copies of letters in support of enhanced rescission from the U.S. Chamber of Commerce and citizens for a sound economy be inserted in the RECORD.

I also ask that a copy of a letter from former CBO Director Rudy Penner be printed in the RECORD along with an excerpt from his book, "Broken Purse Strings, Congressional Budgeting 1974-88."

Dr. Penner concurs that some form of enhanced rescission is necessary. He states:

Congress should at least be required to vote on rescission requests so that the approval or disapproval of the President's judgment is recorded for individual legislators. This reform would clearly represent only a tiny increase in a President's impoundment power, and it could not be expected to affect total spending significantly. But it is a small move in the right direction.

I urge my colleagues to support enhanced rescission legislation.

The material referred to follows:

CITIZENS FOR A SOUND ECONOMY,  
Washington, DC, March 23, 1989.

Hon. GORDON J. HUMPHREY,  
U.S. Senate, Washington, DC.

DEAR SENATOR HUMPHREY: Massive continuing resolutions laden with unwise spending proposals have made a great deal of news in the past several years. Even in years when there is no continuing resolution, it's difficult to believe that every item in a trillion-dollar-plus federal budget has received the careful scrutiny it should have.

That's why Citizens for a Sound Economy is so glad to hear that you've introduced Con. Res. 9, enhancing the president's rescission authority. If this bill passes, I'm sure that Citizens for a Sound Economy's 250,000 members, as well as millions of other American taxpayers, will sleep a little easier knowing that they have a second chance to make Congress and the president reconsider questionable spending proposals. CSE stands ready to do our part in the battle to promote fiscal responsibility.

Sincerely,

WAYNE E. GABLE,  
President.

CHAMBER OF COMMERCE  
OF THE UNITED STATES OF AMERICA,  
Washington, DC, April 26, 1989.

Hon. GORDON J. HUMPHREY,  
U.S. Senate, Washington, DC.

DEAR GORDON: I appreciate your letter explaining S. Con. Res. 9 and H. Con. Res. 45 which you and Representative Martin have introduced, respectively, to provide for enhanced rescission through expedited Congressional procedures. As you pointed out, the Chamber has supported similar measures in the past, and we support your measures now.

We believe that the continuing large federal deficits are a result of excessive federal spending. We enthusiastically support budget reforms such as a balanced budget amendment and enhanced rescission in order to bring spending under control.

Thank you for bringing your proposals to my attention. We look forward to working with you and your staff to ensure passage of this vitally important legislation.

Sincerely,

RICHARD L. LESHNER,  
President.

THE URBAN INSTITUTE,  
Washington, DC, June 12, 1989.

GORDON J. HUMPHREY,  
U.S. Senate, Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR HUMPHREY: Thank you for your letter of June 6.

I am strongly in favor of enhanced rescission and, therefore, enjoyed your article with Rep. Martin. I am enclosing a recent book in which enhanced rescission is discussed on pp. 120-122.

Yours sincerely,

RUDOLPH G. PENNER.

#### THE IMPOUNDMENT POWERS OF THE PRESIDENT

The proposal made above that the president sign the budget resolution would significantly increase presidential power in budgeting and would usually gain the support of the president in enforcing the resolution's targets. It is desirable to enhance presidential power a bit more by somewhat enhancing the power to impound funds voted by Congress.

Currently the president can request a rescission, that is to say, a permanent cancellation of budget authority. For the rescission to go into effect, it has to be approved by both houses of Congress within 45 days of continuous session. They can completely ignore the request, never having to go on record with regard to the desirability of the spending questioned by the president. Although President Reagan was, nevertheless, reasonably successful in using this device in fiscal years 1981 and 1982, obtaining congressional approval for almost 70 percent of the dollar value of his requested rescissions,

the tool was essentially useless to the president in fiscal years 1983-87, when Congress approved less than 2 percent of the value of his rescission requests. Congress should at least be required to vote on rescission requests so that the approval or disapproval of the president's judgment is recorded for individual legislators. This reform would clearly represent only a tiny increase in a president's impoundment power, and it could not be expected to affect total spending significantly. But it is a small move in the right direction.

The slight increase in the president's impoundment power could be used to help enforce a budget resolution after a reconciliation bill had failed, and a rescission bill could be presented as an alternative to all or part of a surtax. But we do not confine the use of enhanced rescission power to these circumstances. A president should obviously retain the right to request rescissions that would bring spending below the joint resolution's target, but having signed that resolution, they would be expected to occur only in unusual circumstances.

It may be desirable to enhance the president's rescission power one notch more than is implied by the foregoing proposal, if it can be done in a constitutionally acceptable fashion. A president could be allowed to cancel budget authority, and that cancellation would become permanent unless the budget authority was explicitly restored by an act of Congress. In other words, in contrast to the current situation in which a rescission fails if Congress does not act, a limited rescission would take effect if Congress did not act. We do not, however, believe it realistic to think that Congress would agree to go quite this far at the present time. It is, nevertheless, important to enhance the president's rescission power somewhat by at least forcing a vote on his or her request.

Many, including President Reagan, have suggested that presidential power be enhanced further by giving the president an item veto—a power now possessed in different forms by forty-three governors. There is little doubt that an item veto would enhance the power of the president, but it is more doubtful that it would be used to control total spending. One particularly careful study of the item veto at the state level concludes that "long run budgetary behavior is not significantly affected by the power of an item veto," although there are particular political circumstances in which the item veto has some impact, for example, when the governor and legislature are of different parties. The item veto is likely to be even less potent at the federal level because it could be used directly to influence under 40 percent of spending; over 60 percent of federal spending is comprised of entitlements and interest on the debt. A president might in some circumstances be able to use the power conveyed by an item veto to bargain for some change in entitlements, but in the normal course of events, entitlements simply go on unchanged unless Congress explicitly votes to change them, and inaction cannot be vetoed.

Another problem arises at the federal level because the typical appropriations bill contains precious few items. Spending, for the most part, is allocated among specific programs by reports that are attached to appropriations bills. Congress would have to change radically its method of operations for the item veto to be effective, and of course, members would always have the opportunity to make it ineffective by changing the ways that items are defined. Indeed, dis-

putes over the definition of an item have often brought the courts into budgeting at the state level. The great advantage of enhancing a president's rescission power over the item veto is that the president has the opportunity to define an "item" when the rescission request is formulated.

Last, but certainly not least, it should be noted that proposals for an item veto have little relevance to the problems posed by the high deficits faced currently. Congress is generally hostile to the notion of an item veto, and it would be several years before the necessary constitutional amendment could possibly be passed. Several more years would pass before it could be ratified by the states. Therefore, whatever its merits, it could not possibly be relevant to the current budget problem.

Our opposition to an item veto assumes that in the new budget process, Congress would abandon the practice of passing huge omnibus bills. Certainly appropriations bills should be enrolled by title, so that the president does not effectively lose the veto power that he now possesses. If for some reason omnibus bills were to become common, the case for an item veto would be much stronger. ●

### SALUTING SMOKEJUMPERS 50TH ANNIVERSARY

● Mr. DECONCINI. Mr. President, Arizona, and most of the Western States, are again facing a critical forest fire season. This summer, just as in 1987 and 1988, the Nation will depend heavily on Federal firefighters to protect our citizens and property from the ravages of wildfire. The first firefighters, to reach many of the more remote fires will be smokejumpers—airborne firefighters with the U.S. Forest Service and the Bureau of Land Management.

On June 16, 17, and 18, many of the smokejumpers who are not responding to fire calls will gather with their retired predecessors in Boise, ID, to celebrate their 50th year of service to the Nation. I would like to take this opportunity to recognize the historic occasion and thank this unique corps for its remarkable record of accomplishment over the last half-century.

By the mid-1930's, the use of parachutes to drop equipment to firefighters had become a well-established practice. At that time there was talk of using parachutes to actually drop firefighters near remote fires to reduce response time and help control the spread of forest fires. The response of some was skeptical. One of the West's regional foresters, Evan W. Kelley, noted that,

All parachute jumpers are more or less crazy—just a little bit unbalanced, otherwise they wouldn't be engaged in such a hazardous undertaking.

He discounted the practicability of the idea and indicated to his superiors that he would have no part of any such scheme.

Nevertheless, in 1939 an experiment was conducted in the North Cascades of Washington State. For over a

month a small group of men sought to demonstrate the feasibility of parachuting firefighters to remote fires in rugged terrain. The experiment was successful, and smokejumping was born. In 1940, the Forest Service for the first time began using smokejumpers in its efforts to suppress wild fires, and continued to do so without interruption since that time.

Over the years, more than 200,000 jumps have been made, including not only fire jumps, but also rescue jumps to assist injured individuals far from any trained medical assistance. Many smokejumpers have lost their lives in action, and far more have sustained serious injuries. Nevertheless, despite the risks and relatively low pay, the smokejumper program has attracted an extremely diverse and talented group ranging from students to doctors, from conscientious objectors to ex-marines, from family men to sworn bachelors. The smokejumpers have established a reputation for being hard-working, skilled, dependable, fiercely independent, and remarkably self-sufficient. Some also would agree with Evan Kelley's observation that they indeed are "more or less crazy," an impression which in at least some cases was well deserved.

Throughout its history, the jumpers have maintained a vibrant and vital organization. They preceded the formation of the U.S. Army's airborne units, and served as a model for the establishment of the Army's first paratroop training facility in Fort Benning, GA. They constantly have improved and refined their equipment and techniques in order to do a better job. Much of the jump gear is designed and assembled by the jumpers themselves; some of the jumpers are as handy with a sewing machine as they are with a shovel.

As wilderness policies have changed over the years, the jumpers have been at the cutting edge by helping to implement methods which seek to balance the need to manage fires with the desire to minimize human impact on the land. This highly motivated and spirited group of people serves as an example of enlightened public service in the best American tradition. I thank the smokejumpers for a job well done, and salute them on their 50th birthday. ●

### CHILD CARE AND CHILD HEALTH

Mr. BOREN. Mr. President, I want to thank the chairman of the Finance Committee, Senator BENTSEN, for holding yesterday's markup to act on the issues of child care and child health. I believe that this shows his commitment to developing legislation that will offer much needed assistance to many families, most often low-income families, where the children

are often the victims of the consequences of their environment. I am pleased that this proposal passed out of the committee and I hope we will consider it soon on the floor of the Senate.

Unfortunately, children are at risk by their parents being unemployed, as they often cannot afford to pay for adequate medical insurance coverage. The cost of health coverage has increased so much over the last decade, and families that are at the breaking point any way just do not have the funds to pay for it. Coincidentally, children are also at risk by their parents being employed, either in families where both parents work, or in single parent families where there is great reliance on child care. Mr. President, I think this is a unique opportunity to tie these two issues together to pass legislation that is truly needed by all of these children most at risk.

I will not review the proposal in detail, but I do appreciate the fact that it targets the children of low-income families and addresses the issues of child care and health protection. It is very hard for Congress to keep pace with the changing needs of society, but these two issues are obviously a priority in the Finance Committee, in the full Senate, in the House of Representatives, and in the White House. The President repeatedly said all through the campaign that child care and related issues were of utmost importance to him. He has followed up with a proposal of his own for a child care tax credit that Senator DOLE has offered in the Senate.

I am also committed to acting on legislation to address these needs. I am pleased that this proposal included the refundable child care tax credit. For the first time, families whose income is so low that they have no tax liability would benefit from this credit by receiving a refund, payable monthly so that the cash would actually be available to them. For middle-class families, child-care costs are a real burden to their budget; for poor families, the average cost of over \$3,000 per child is prohibitive. This would be one way to infuse cash into a family's budget to offset the costs of their child's care.

Just in Oklahoma, 22 percent of the children under 5 years old live in poverty. This amounts to 62,000 kids. In 1988, only 15,500 of them received any child-care assistance funds. They are prime candidates for being in child-care homes, day-care centers, church-based or other facilities, because their parents are forced to work, if they can find a job in our depressed market. And while the number of children in day care has gone up—as more and more women enter the labor force—6 percent fewer children in Oklahoma received assistance last year than they

did 8 years ago. We cannot ignore the needs of these families.

I also cannot say enough about the need for adequate health coverage. I have made numerous statements before the Finance Committee and before the full Senate about the crisis of health care in our country. The costs are escalating rapidly, and driving more and more people out of the insurance market because they simply cannot afford the premiums to cover the entire family. This proposal brings to light the fact that the greatest proportion of uninsured children come from low-income families, and I believe that we must act responsibly with limited Federal dollars to identify and target the funding to these families. I think this is a sound approach to encourage parents to insure their children and in turn, be able to take advantage of this expanded dependent care credit to cover these expenses.

Again, I thank the chairman for his hard work in developing this children's initiative. I am pleased to support this effort to address these pressing needs of the children in Oklahoma and across the Nation.●

#### THE 75TH ANNIVERSARY OF LOCAL 11, IAHFIAW

● Mr. SARBANES. Mr. President, this year marks the 75th anniversary of local 11 of the International Association of Heat and Frost Insulators and Asbestos Workers [IAHFIAW] based in Baltimore.

For three-quarters of a century, the members of this distinguished organization have made significant contributions to the growth and strength of our Nation and the State of Maryland. I would like to take this opportunity to congratulate the members of local 11 and to reflect briefly upon its proud history.

Representing workers engaged in the "practical mechanical application, installation, or erection of heat and frost insulation," the IAHFIAW has earned a reputation for unwavering dedication to the health, safety, and financial security of its members. Its efforts have also played a significant role in maintaining a high level of quality and integrity in their craft. The skilled members of local 11 can be found working throughout the State of Maryland—in factories, hospitals, defense plants and the U.S. Naval Academy. Indeed, their work ensures the safety and comfort of millions of Marylanders every day.

Local 11 has championed the cause of working men and women everywhere. The IAHFIAW has made its voice heard on a variety of issues related to health, working conditions, senior citizens, and other matters so important to our progress. Its members are devoted to the principle of a fair day's wages for a fair day's work

and their efforts toward that goal are worthy of recognition.

The people of Maryland are greatly indebted to the skill and hard work of local 11's dedicated members, and I congratulate them on their 75 years of achievement.●

#### AT LEAST OPEC HAS A POLICY

● Mr. BREAU. Mr. President, I have lost count of the number of times I have taken the floor of the House and Senate over the years to talk about peril this country faces from its lack of an energy policy which recognizes that oil is a strategic resource vital to our Nation's security.

Someday, maybe not too far in the future, the next generation may ask our generation why we allowed our domestic oil industry to die at the hands of foreign imports. I hope that day never comes. But I am afraid that it might if we do not reverse our growing addiction to foreign oil.

Mr. President, one of the most insightful commentaries on our domestic energy situation and our lack of an energy policy appeared on June 13, just this past Tuesday, on the editorial page of the New Orleans Times-Picayune.

I ask that this editorial be printed in the RECORD and I commend it to all my colleagues.

The editorial follows:

#### AT LEAST OPEC HAS A POLICY

Say what you will about the strength or fragility of the Organization of Petroleum Exporting Countries, at least the cartel has an energy policy. That is more than can be said of the United States.

On a day when OPEC was announcing significant alterations in its policy in Vienna, American governors were calling on Congress to develop a national energy policy that will reduce the nation's growing dependence on OPEC oil.

Addressing members of the House Banking subcommittee on economic stabilization, Alaskan Gov. Steve Cowper conceded that "energy issues are not a central concern to most people today." But, he said, "I come before you . . . to say that complacency is both unwarranted and dangerous."

The governor, representing the national Governors' Association, presented the association's recommendations after an 18-month study of the energy issue. These include tax and price incentives to encourage the development of domestic oil, gas and coal.

The governor noted that the United States imported more than 43 percent of its oil last year, and the bill accounted for more than one-fourth of the U.S. trade deficit.

The trends are "in the wrong direction," he said. "Domestic oil production is down, oil production in other stable and friendly nations is down as a percentage of world oil production, the concentration of oil productive capacity in the Persian Gulf is up and domestic oil consumption is up."

In Vienna, the 13-nation OPEC agreed to increase overall production from 18.5 million barrels a day to 19.5 million and leave it to world market forces to set the price.

On what had been a potentially divisive issue, the \$18-a-barrel benchmark price for OPEC oil, the cartel representatives reached a compromise.

Rather than calling the price a benchmark, it is to be called the OPEC "reference" price and will be allowed to float according to market demand.

One minister explained that although OPEC would like oil prices to stabilize around current levels indicated by the \$18-a-barrel reference price, OPEC would not intervene unilaterally to raise or lower prices if they moved away from the reference price.

The change in policy appears to be more of a triumph for cartel leader Saudi Arabia than a true compromise. The Saudis had recommended dropping a benchmark or ceiling price entirely and letting the market determine prices. But other OPEC members apparently needed the security blanket of at least a "reference" price.

Of course, OPEC members will continue to cheat on their production quotas. But that is not the issue. The issue is how much they cheat.

If they cheat too much, prices will move significantly below the reference price. If they stick fairly close to their quotas and demand continues to rise in the United States and elsewhere, prices should rise.

Thus the reference price could prove to be a useful barometer of OPEC cheating or compliance.

Meanwhile, non-OPEC nations, including Mexico, have agreed to reduce their oil exports voluntarily.

The outlook, therefore, seems to be for higher prices with more and more U.S. oil imports coming from OPEC. The need for a U.S. energy policy thus becomes more urgent with each passing day.

The governors have recognized that. Maybe they can get Congress and the Bush administration to do so as well.●

#### ORDER FOR RECESS UNTIL 1:30 P.M., THURSDAY, JUNE 15, 1989, AND ORDER FOR MORNING BUSINESS

Mr. DODD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 2 p.m., Thursday, June 15, and that following the time for the two leaders there be a period for morning business not to extend beyond 2:30 p.m., with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER. The Chair recognizes the Republican leader.

Mr. DOLE. Mr. President, I intended to raise this earlier with the majority leader. I had a number of requests on this side that we might come in at 1:30 and use 30 minutes to speak on the President's crime package, if there is no objection to that from the majority leader, or we could do it after, but I think he wants to start on the child care bill as soon as possible.

Mr. DODD. I will change it to 1:30. I gather there is no problem over here with that at all.

Mr. President, I would amend my unanimous-consent request that the Senate stand in recess until 1:30 p.m., and that following the time for the two leaders there be a period for morning business not to extend beyond 2:30 p.m., with Senators permitted to speak therein for up to 5 minutes each.

Mr. DOLE. Mr. President, reserving the right to object, and I have no objection. I think during that time we will be able to provide opportunities for Senators THURMOND, SPECTER, myself, and others to speak on the President's crime package.

I thank the distinguished acting majority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

# RECESS UNTIL 1:30 P.M. TOMORROW

Mr. DODD. Mr. President, if the distinguished Republican leader has no further business, and if no Senator is seeking recognition, I now ask unanimous consent that the Senate stand in recess, under the previous order, until 1:30 p.m., Thursday, June 15, 1989.

There being no objection, the Senate, at 6:57 p.m., recessed until Thursday, June 15, 1989, at 1:30 p.m.

## CONFIRMATIONS

Executive nominations confirmed by the Senate June 14, 1989:

### AMBASSADOR

Richard Reeves Burt, of Arizona, for the rank of Ambassador during his tenure of service as Head of Delegation on Nuclear and Space Talks and Chief Negotiator on Strategic Nuclear Arms (START).

### DEPARTMENT OF STATE

John D. Negroponce, of New York, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Mexico.

Bernard William Aronson, of Maryland, to be an Assistant Secretary of State.

John Hubert Kelly, of Georgia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be an Assistant Secretary of State.

### DEPARTMENT OF LABOR

Dale Triber Tate, of the District of Columbia, to be an Assistant Secretary of Labor.

Kathleen M. Harrington, of the District of Columbia, to be an Assistant Secretary of Labor.

Jennifer Lynn Dorn, of Maryland, to be an Assistant Secretary of Labor.

Robert P. Davis, of Virginia, to be Solicitor for the Department of Labor.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.